

REGULATING AI: THE EU AGREES ON LANDMARK AI ACT

EU AI Act

On Friday, 8 December 2023, the European Union ("EU") agreed on landmark new legislation regulating AI in the EU. After three gruelling days of negotiations, EU lawmakers announced agreement on the text of the EU AI Act late on Friday¹. The previous day's discussion had involved almost 24 hours of debate to reach a provisional deal on how to regulate AI systems like ChatGPT. Friday's negotiations concerned the use of AI in biometric surveillance.

In response to the news, the President of the European Commission, Ursula von der Leyen, said: "This is an historic moment. The AI Act transposes European values to a new era."

Hold-ups from Germany, France and Italy drew out the negotiations, stemming from concerns around overregulating local players and impacting their ability to compete on the global scene. These three Member States each made a late proposal that generative AI model producers should self-regulate. However, with the upcoming Parliamentary elections in June, the EU was on a strict timeline to have a final agreement ready to vote on in the spring.²

While the prohibitions of the EU AI Act would apply six months after its adoption, the Act must still be voted on by the European Parliament and Council.³ It will therefore not take effect until 2025 at the earliest.

The draft EU AI Act was published in 2021 and was the first of its kind worldwide. With the EU leading the way in data protection with the GDPR, the draft AI act was a natural extension of its lead in regulating the digital space. The EU AI Act includes, inter alia, restrictions on AI surveillance and requirements to disclose copyrighted materials.

Regulating AI

While the AI space is partially regulated by applicable commercial and intellectual property laws, including data protection law, significant gaps exist particularly relating to risks that do not necessarily reflect the immediate incentives of parties.

To address such gaps, on 26 October 2023, the Secretary-General of the [UN announced](#) the implementation of a new Artificial Intelligence Advisory Board on "risks, opportunities and international governance of artificial intelligence".

Four days later, on 30 October, 2023, the EU Commission announced that the G7 had agreed on [International Guiding Principles](#) on Artificial Intelligence and a [voluntary Code of Conduct](#) for AI developers. The eleven Guiding Principles are intended to promote the safety and trustworthiness of AI technology and provide guidance to developers and users of AI. These Guiding Principles are the basis of the voluntary Code of Conduct, which will complement the EU AI Act.

Similarly, the US Office of Science and Technology Policy has published a [blueprint AI "bill of rights"](#), which covers five core protections it recommends users should expect when interacting with AI systems. These are:

1. Safe and effective systems.
2. Algorithmic discrimination protections.
3. Data privacy.
4. Notice explanation.
5. Human fallback and intervention.

The fifth protection may be of particular interest as it covers the right to interact with a human if a question or concern arises from an output from an AI system.

¹ <https://www.reuters.com/technology/stalled-eu-ai-act-talks-set-resume-2023-12-08/>, [EU agrees landmark rules on artificial intelligence \(ft.com\)](#)

² <https://www.reuters.com/technology/eu-still-hammering-out-landmark-ai-rules-marathon-overnight-talks-2023-12-07/>

³ [E.U. Agrees on AI Act, Landmark Regulation for Artificial Intelligence - The New York Times \(nytimes.com\)](#)

The EU, Switzerland, the UK, and the United States have all commenced the review process to implement framework AI regulations. However, there are currently no such regulations operating in these jurisdictions.

At the beginning of November, the UK held an [AI Safety Summit](#), hosted by the UK Prime Minister, which discussed targeted measures for furthering safety in global AI use. Earlier in 2023, the UK Department for Science, Innovation and Technology and Office for Artificial Intelligence published details of its approach for implementing AI regulation.

US

On 30 October 2023, President Biden issued an [Executive Order](#) on "Safe, Secure and Trustworthy Artificial Intelligence". This Executive Order contains sweeping provisions that focuses on mitigating safety and security risks and encouraging the development of AI in the United States, including by drawing in new AI talent⁴. However, President Biden's powers to legislate in the private sphere remain limited, and he calls on Congress to act, emphasising the need for bipartisan data privacy legislation⁵.

With the upcoming 2024 elections, the US may face similar time crunches and political hurdles as the EU in passing a functional and timely AI framework.

Switzerland

On 22 November 2023, the [Swiss Federal Council launched](#) its review process for a Swiss regulatory regime governing AI. Specifically, it has instructed the Department of the Environment, Transport, Energy and Communications to identify approaches to regulating AI by the end of 2024. The Federal Council noted the importance of having a regulatory approach that is compatible with the EU AI Act and the Council of Europe's AI Convention.

Data protection will also continue to be a key element of AI regulation. The Swiss regulator launched the New Federal Act on Data Protection (nFADP): an updated FADP, which follows the EU GDPR to a large extent. The nFADP implements new legislative requirements on protecting personal data starting on 1 September 2023, which covers only the data of natural persons (and not of legal persons) and makes the keeping of a register of processing activities mandatory.

In addition to data protection, with new AI companies like OpenAI emerging and growing rapidly, corporate structure and governance may become an increasingly important theme for regulatory development.

Conclusion

The EU AI Act is an important milestone in AI regulation, which is likely to influence how other jurisdictions decide to regulate. A key challenge lawmakers will be confronted with in the coming years is how best to adapt the regulatory framework to rapidly evolving technology in a way that does not stifle development. As new AI companies emerge and businesses begin to incorporate AI into their operations, compliance with various AI regulations will become increasingly relevant.

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⁴ [Biden Issues Executive Order to Create AI Safeguards - The New York Times \(nytimes.com\)](#)

⁵ [FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence | The White House](#)

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