

The EU Artificial Intelligence Act (AIA) – a brief overview

Conference: THE ADVENT OF AI: RESHAPING CRIMINAL PROCEDURE

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- (Single) Market regulation by harmonization of rules
- Nonetheless, multiple references to fundamental rights as in other DSM-frameworks
 - (1) The purpose of this Regulation is **to improve the functioning of the internal market** by laying down a uniform legal framework in particular for the development, the placing on the market, the putting into service and the use of artificial intelligence systems (AI systems) in the Union, in accordance with **Union values**, to promote the uptake **of human centric and trustworthy artificial intelligence (AI)** while ensuring a **high level of protection of health, safety, fundamental rights** as enshrined in the Charter of Fundamental Rights of the European Union (the ‘Charter’), **including democracy, the rule of law and environmental protection**, to protect against the harmful effects of AI systems in the Union, and **to support innovation**. ...
 - (2) This Regulation should be **applied in accordance with the values** of the Union enshrined as in the **Charter**, facilitating the **protection of natural persons, undertakings, democracy, the rule of law and environmental protection**, while boosting **innovation** and employment and making the **Union a leader** in the uptake **of trustworthy AI**.
 - (6) Given the major impact that AI can have on society and the need to build **trust**, it is vital for AI and its regulatory framework to be developed **in accordance with Union values** as enshrined in Article 2 of the Treaty on European Union (TEU), the **fundamental rights** and freedoms enshrined in the Treaties and, pursuant to Article 6 TEU, the Charter. As a prerequisite, AI should be a **human-centric technology**. It should serve as a tool for people, with the ultimate aim of increasing human well-being.
 - (7) In order to ensure a consistent and high level of protection of **public interests as regards health, safety and fundamental rights**, common rules for high-risk AI systems should be established. Those rules should be **consistent with the Charter, non-discriminatory and in line with the Union’s international trade commitments**. ...
 - (8) A Union legal framework ... high level of protection of **public interests**, such as health and safety and the protection of **fundamental rights**, ... rules should be **clear and robust in protecting fundamental rights**, ... **innovative solutions**, enabling a European ecosystem of public and private actors creating AI systems **in line with Union values** ... this Regulation supports the objective of **promoting the European human-centric approach to AI** ... ensures the protection of **ethical principles**

- Scope / Regulatory approach
 - “Product safety” ruleset / Risk-based approach and therefore graduated approach → see already DSA
 - categories: prohibited, high-risk, limited risk, ”below relevance”
 - Harmonisation approach concerning the full life-cycle of AI systems
 - Limits: prohibited types/practices of AI
 - Rules: different types of obligations for different categories of AI systems
 - Oversight and monitoring
 - Innovation and economy support approaches

- Obligation to consider the Regulations’ rules and goals already “by design” → see already GDPR (Data protection by design (and default))
- Transparency as regulatory principle / approach → see already GDPR, more in DSA
 - one of the main goals of AIA, both in view of users as well as for better supervision
 - record-keeping, information obligations proactive and reactive

- **Prohibited AI practices** (Art. 5 (1)): relevant for criminal law / LEA
 - (d) the placing on the market, the putting into service for this specific purpose, or the use of an AI system for **making risk assessments of natural persons** in order to **assess or predict the risk of a natural person committing a criminal offence, based solely on the profiling of a natural person or on assessing their personality traits and characteristics**; this prohibition shall not apply to AI systems used to support the human assessment of the involvement of a person in a criminal activity, which is already based on objective and verifiable facts directly linked to a criminal activity;
 - (e) the placing on the market, the putting into service for this specific purpose, or the use of AI systems that **create or expand facial recognition databases through the untargeted scraping of facial images from the internet or CCTV footage**;
 - (h) the use of **‘real-time’ remote biometric identification systems** in **publicly accessible spaces** for the **purposes of law enforcement, unless** and in so far as such use is **strictly necessary** for one of the following objectives: ... (exceptions for allowed use concern “targeted search”, “prevention of ... threat to the life”, “localisation of suspects” (of certain serious offences) and there are further conditions for this laid down in Art. 5 (2) to (5) and concerning reporting in (6) and (7))

- LEA use of AI systems as **high-risk AI systems** listed in **Annex III No. 6**

- Definition in accordance with Framework Convention CoE and in line with international approaches

International: Annex

AI Regulation and Governance on a Global Scale: Overview of Scope, Definitions and Key Elements

The table below serves as annex to the report 'AI Regulation and Governance on a Global Scale'. It outlines in a summarised form and as synoptical comparison current international, regional and examples for national regulatory initiatives aimed at regulation and governance of AI systems. The table was prepared by *Dr Sandra Schmitz-Berndt*, Research Associate in the project LAIWYERS, funded by the Institute of Advanced Studies (IAS) of the University of Luxembourg (for correspondence: <Sandra.schmitz@uni.lu>).

	OECD	UNESCO	CoE	US	UK	EU
Year	2019, updated 2023	2021	Forthcoming (planned 2024)	2023	2023	2024
Instrument	Recommendation of the Council on	Recommendation on the Ethics of	Draft for a Framework Convention on	Executive Order 14110 on the Safe, Secure	White Paper 'A pro-innovation approach to AI	Regulation laying down harmonised

- 'AI system' means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments; (Art. 3 (1))

■ Scope

- territorial application: “irrespective of place of establishment” → market-place approach (if output is used in the union), reflecting new EU standard, see GDPR, DSA
- addressing broadly: providers, deployers, importers, distributors, product manufacturers, also representatives and affected persons
- Exclusions in view of division of powers between EU and Member States and other goals
 - national security as well as military, defence or national security
 - if for the sole purpose of scientific research and development
 - not during research, testing or development phase prior to being placed on market (except testing in real life conditions)
 - AIA leaves unaffected (see “without prejudice” as in many other pieces of legislation)
 - data protection rules (but AIA includes specific DP provisions)
 - consumer protection and product safety

The EU AIA – Main elements: Some further “Highlights” and Interplay

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- Human oversight (“human in the loop”) → see GDPR
 - GDPR: Art. 22, automated decision-making
 - AIA: for high-risk AI systems
- Inclusion of industry and flexibility by detailing rules → see GDPR and DSA
 - Codes of conduct, seals, conformity assessment
 - DPIA and FRIA
- GenAI classification in case of systemic risks → see designation DSA/DMA
- Oversight structures and procedures → see GDPR, more advanced in DSA
 - “market monitoring, market surveillance, governance and enforcement”
 - representatives for non-EU-based providers
 - institutional dimension (AI office, EAIBoard, cooperation) and procedures incl. penalties
 - EU database

- When it comes to interaction with existing digital rulebook of EU
 - rather a “next to the others” (although related) than “integrated into others”
 - → providers etc. can fall under several legislative acts and overlaps not excluded
 - possibly need for cleaning up in view of coherence, a lot of efforts made already for consistency (esp. AIA in view of DSA), even though rules are only applied since a short time
- When it comes to the place in international context
 - well-aligned with other approaches
 - potential for blueprint and Brussels effect (see previously GDPR, maybe DSA)
- Decisive next steps
 - detailing the provisions incl. EC guidance and standardization (→ ethical dimension)
 - enforcing and empowering oversight bodies to do so
 - review international developments

- Continuing academic discussions – also possible here:

[AIRe – Journal of AI Law and Regulation](#)

126 | Reports

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Reports

International

AI Regulation and Governance on a Global Scale: An Overview of International, Regional and National Instruments

*Mark D. Cole**

I. Introduction

'Like electricity in the past, artificial intelligence (AI) is transforming our world'.¹ As has been the case with any new technology, the existing and future applications of AI systems are raising concerns in the pub-

Regulation is, however, still in its infancy. Differing views of how to regulate AI exist, but there seems to be consensus that ethic codes alone are not sufficient to manage the risks involved. Questions are raised as to which would be the right level or context in which the topic of regulation should be ad-





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Related Research Work at the University of Luxembourg in a Project supported by the
Institute of Advance Studies (IAS): **LAIWYERS – Law and AI: WaYs to Explore Robust Solutions**