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Corporate Governance Update: All Eyes on the EU AI Act

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The European Union's [AI Act](#) became law on August 1, 2024, and is scheduled to take effect on August 2, 2026. This legislation establishes the EU as the global first mover in AI regulation and is expected to serve as a benchmark for future legislative efforts around the world. As efforts to regulate AI elsewhere, including the United States, are still in the early stages, other jurisdictions will have the opportunity to learn from this regulatory experiment. In the best-case scenario, the AI Act will serve to foster responsible development and safe deployment of increasingly complex and powerful AI systems. But it is also possible that the AI Act may have the effect of stalling AI innovation in Europe and causing the EU to become a place to be avoided by businesses that develop and operate AI systems. Whether current and future legislative efforts, in the EU and elsewhere, can prove agile enough to regulate—without stifling—a rapidly moving industry remains an open question.

As the EU AI Act moves toward full implementation, US companies should watch the effects of the legislation on organizations up and down the AI value chain in order to gain a working understanding of the consequences, both intended and unintended, of the AI Act in practice. These insights not only will have business value but will also enable companies to provide informed input to US legislators and regulators on the development of AI regulation in the United States. Though domestic regulation at the federal level is not on the near horizon, it seems inevitable that its time will come. Lessons from the European vanguard will be invaluable when it does.

The EU AI Act

The EU AI Act categorizes AI systems into four levels of risk, ranging from “unacceptable risk” to “minimal risk” and regulates them accordingly. The “unacceptable risk” category, which includes AI systems designed for social scoring and other societally detrimental activities, is simply prohibited outright by the Act. The “high risk” category, which includes both AI systems used as product safety components and AI systems in eight key areas (*e.g.*, education, law enforcement), is heavily regulated; the provisions regarding this category comprise the bulk of the Act. The “limited risk” category covers AI systems that interact directly with end users; regulation of this category focuses on transparency obligations aimed at informing users that AI is being used to create or manipulate their experience. And finally, the “minimal risk” category

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covers everything else, including commonly used systems such as spam filtering or video gaming, and is unregulated at this time. General-purpose AI systems—*i.e.*, systems with broad use capacity, both independently and as part of other AI systems—are categorized based on their computational power: If a general-purpose AI system exceeds a certain level, then it is deemed to entail “systemic risk” and is subject to additional regulation.

The EU AI Act creates significant obligations for “operators” of high-risk AI systems. In this context, “operators” does not mean end-users, or regular people who are interacting with the system; it means “providers,” “product manufacturers,” “deployers,” “authorized representatives,” “importers,” and “distributors,” or those who are using it in a professional capacity. Each category of operator is subject to its own set of compliance obligations. The AI Act covers operators that are located in the EU as well as operators outside the EU, if the AI system at issue is operating in the EU.

Regulatory authority under the EU AI Act resides in a combination of entities. A centralized AI Office newly established within the European Commission will enforce common EU rules. In addition, an AI Board comprising representatives of EU member states will advise on the application of the Act. And finally, each EU member state will designate “national competent authorities” including at least one notifying authority and one market surveillance authority and equip them to fulfill their responsibilities under the Act; these authorities will have the responsibility and power to enforce the Act at the national level. Enforcement can include significant monetary fines as well as an order to withdraw or recall the AI system or affected product from the market.

Additional EU Regulatory Initiatives

In October 2023, the European Commission [announced](#) an agreement by G7 leaders on International Guiding Principles on AI and a voluntary International Code of Conduct on AI. These “living documents” are intended to complement the EU AI Act by setting forth conceptual agreement at the international level. The [Guiding Principles](#) are intended to be the foundation for the international code of conduct, calling on developers of advanced AI to take steps intended to increase the safety, transparency, accountability, and utility of AI systems. The [Code of Conduct](#) elaborates on these principles in actionable steps for AI developers.

The EU is also in the early stages of drafting a “[liability directive](#).” This directive would apply to non-contractual, fault-based civil suits brought before national courts of law within the EU. The directive, if adopted, would create a rebuttable presumption of causality to lower the burden of proof if a harmed plaintiff can show relevant non-compliance with AI regulations and a reasonably likely causal link between the damage suffered and the performance of the AI system. It would also empower national courts to order disclosure about high-risk AI systems that are suspected of causing harm to victims. The proposal’s goals of reducing legal uncertainty and forestalling the emergence of nationally fragmented AI-related civil liability rules are

laudable; however, this draft liability directive has raised concerns from stakeholders and academics, who question its effectiveness in protecting consumers, on the one hand, and its potentially detrimental effect on AI innovation and the potential creation of conflicts between EU and national rules, on the other.

AI Regulation in the United States

The United States is still in the process of implementing the provisions of the [Executive Order on AI](#) signed by President Biden in October 2023. As an executive order may be easily revoked, it remains to be seen whether the next Administration will continue along the same lines. Notwithstanding state-level initiatives and a smattering of proposals on Capitol Hill, there is not yet any significant legislative effort toward federal regulation of AI. With the finalization of the EU AI Act, the US and the international community will have the opportunity to witness the implementation and enforcement of this significant initiative over the next few years. In recent decades, EU regulation of the tech industry has been widely regarded as overly prescriptive, hindering innovation and negatively affecting the EU as an entrepreneurial ecosystem; the AI Act may or may not represent a continuation of this pattern. For now, US companies should keep a close eye on the effects of the EU AI Act at all levels of AI development, deployment, and usage so that when—not if— domestic regulation gathers momentum, knowledgeable corporate stakeholders are well-positioned to provide useful input toward rational regulatory efforts.

As boards of directors reflect on the impact that AI and AI regulation will have on their particular companies, they will need to consider the appropriate risk oversight framework. To accomplish this, boards and management teams will need to consult third-party resources, as it is unlikely that the expertise needed to evaluate the risks and appropriate mitigation will reside in either the board or the senior management team.