

The AI Act: just one step away from application

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Council and Parliament Agree

On December 9th, the ambitious European legislative project of regulating Artificial Intelligence (“AI”) systems comprehensively and horizontally, yet neutrally, moved one step forward towards adoption, as Council and Parliament agree on a provisional text of the law, 3 years after it was officially first discussed at the Council in October 2020.

Still having to undergo approval by the Parliament, at the January 24th Telecom Working Party session, and by representatives of the Member States (“MSs”) at the Council meeting of February 2nd, we wonder: is the AI Act finally arriving under the Belgian Presidency on February 2024?

Council and Parliament Agree

Following Trilogue meetings in June, July, September and October, Council and Parliament issued a joint Provisional Agreement on December 6th 2023. Among the key changes and concessions, the final text now includes:

- rules on foundation AI systems;
- legal exemptions for high risk systems;
- a revised system of governance with enforcement powers at EU level;
- the obligation to conduct a fundamental rights impact assessment;
- the obligation to register use of AI systems in a EU-level database;
- complaint mechanisms for non-compliance with the AI Act.

Additionally, the text reformed:

- the specific obligations for high risk systems;
- the listing of prohibited AI systems;
- the penalties provided for;
- the rules on allocation of liability;
- the rules supporting innovation and creating sandbox initiatives.

The Next Steps

This common position will be submitted to the Presidency of the Council and Parliament for MS representatives and EU Members of Parliament for endorsement, after which it will undergo legal-linguistic revision, before the formal adoption. As part of the provisional agreement, the AI will apply two years after its entry into force. As such, it is believed, it should apply from somewhere in 2026.

It is, however, still uncertain that a final text for the AI Act will effectively be adopted by February this year: despite the agreement of Parliament and Council, various sources have indicated Berlin, Paris and Rome has been engaging in conversation to move forward with introducing a common position with changes to the Provisional Text, which, if introduced, could block the enacting of the AI Act indefinitely. None of the parties involved have, however, come to public with any information regarding the scope (or even the existence) of said common position agreement. So the question remains: will there be Act in February '24?

Thinking about tomorrow? Let's talk today.

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