

## EUROPE:

### New Artificial Intelligence Regulation

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Last March, by means of a Legislative Resolution of the European Parliament, dated March 13th, 2024, the new **European Regulation on Artificial Intelligence** (Artificial Intelligence Act) was approved. The European Union takes a major step to get ahead in the race to regulate artificial intelligence. The referred rule was created with the primary goals of:

- Ensuring that artificial intelligence systems used in the European Union and introduced in the European market are safe and guarantee the **protection of fundamental rights**.
- **Encourage investment and innovation** in the field of artificial intelligence in Europe.

The approved text refers to an **artificial intelligence system** (AI system) as *"a machine-based system, designed to function with diverse levels of autonomy, that can exhibit post-deployment adaptability and that, for explicit or implicit objectives, infers from the input information it receives, how to generate output information, such as predictions, content, recommendations, or decisions, that can influence physical or virtual environments."*

**Risk-based approach.** The Law establishes diverse requirements and obligations on AI systems depending on the risks posed by their use. The higher the risk, the stricter the rules. Consequently, different levels are established, varying from **risks considered to be unacceptable**, to minimal risks AI systems. In relation to the first of the cases, maximum risk, the following systems are prohibited: algorithmic systems that violate fundamental rights, social scoring systems, emotion recognition, predictive surveillance, or the tracking of biometric data to infer people's race, sexual orientation or political opinions. Regarding minimum risk, transparency requirements are established for the users. To put it simply, it will have to be specified whether a text, a song or a photograph is generated by artificial intelligence.

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Chapter XII of the AI Act is dedicated to “penalties”. Depending on the type of risk, penalties can reach **up to 35 million euros** or, if the offender is a company, up to 7% of its total worldwide turnover of the previous financial year, whichever is higher. All of this will be managed by the **AI Office**, the entity created specifically to ensure compliance with the rule.

The Regulation **will enter into force 20 days after its publication in the Official Journal of the European Union**. From this moment on, it will be **applied gradually** from six to thirty-six months after its publication, depending on the type of risks or subjects it deals with

We will not delve into whether this new rule is right or not. Nevertheless, at a time when generative artificial intelligence models are being trained with numerous data, in most cases with no consideration, **the AI Act does not regulate** in depth aspects such as the defense of **copyright** or other aspects of Intellectual Property, in which AI generated content can prompt new situations. For instance:

- If a person uses artificial intelligence tools to create a literary, cinematographic or musical work, to what extent can this person be recognized as the author of the work? And if the work is purely created by an AI system?
- Can an invention created by artificial intelligence be patented? And, in the event that it can be patented, who should be recognized as inventor?
- Artificial intelligence can be used to generate variants of already existing designs which, in many cases, may infringe third party rights. In this case, who violates these rights?
- Regarding trade secrets, do certain AI systems present a conflict with this legal instrument?

As we can see, emerging issues make us rethink the need to **amend the Intellectual Property System** in order to achieve a balanced protection of the works and inventions created through artificial intelligence.

In any case, the **new Artificial Intelligence Act** is already a reality and, undeniably, **EU history**