

The Osborne Clarke AI Radar

Guiding your development of AI to get ready for the EU and UK markets.



The AI Act

AI Liability Directive

GDPR/UK GDPR

EU Digital Markets Act

**EU Data Governance Act
and Data Act**

Intellectual Property

**UK Government Policy
and National AI Strategy**



Why we developed the AI Radar

Our Practice and Experience

The team at Osborne Clarke is one of the leading legal practices on applied artificial intelligence and machine learning.

Why advise clients on a range of AI related issues such as big data and GDPR, causation and liability, bias, IP and licencing, and competition. So for example, team members are involved in the following initiatives.

Our Initiatives

We don't just do the work, we are active thought leaders, adding to the wider debate and ultimately helping to shape public policy in this area.

UK All Party Parliamentary Group (APPG) on AI

We are Advisory Board members of this committee which is a cross-parliament body made up of Members of Parliament and peers, as well as industry experts.

International Technology Law Association (ITechLaw)

We chair ITechLaw's Responsible AI Committee, which is tasked with developing a practical global ethical framework for the use of artificial intelligence.

European Union AI Alliance

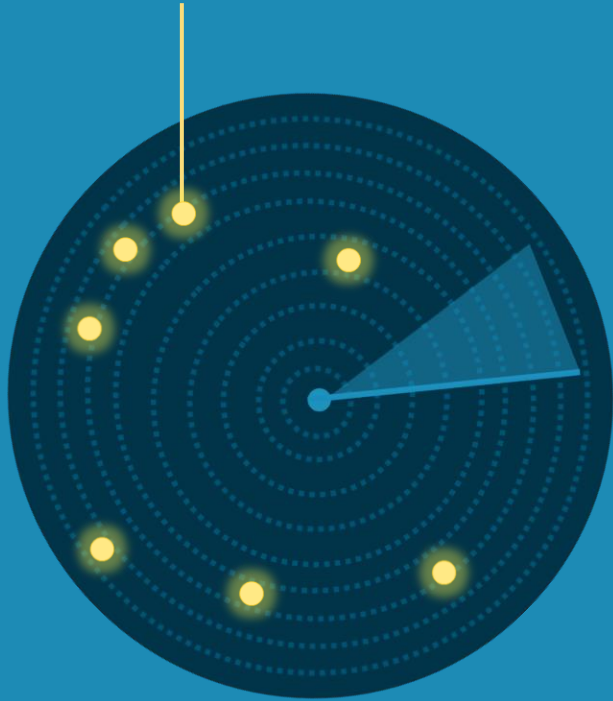
We're part of a wider consultative body to the EU High-Level Expert Group on Artificial Intelligence. We act for some of the world's most significant developers and users of this technology.



The AI Radar gives a snapshot of the current state of AI law in the EU and UK. This horizon scanning document gives an overview with high level practical key takeaways for businesses.

This radar has recently been updated to include the March 2023 UK AI Whitepaper.

The AI Act

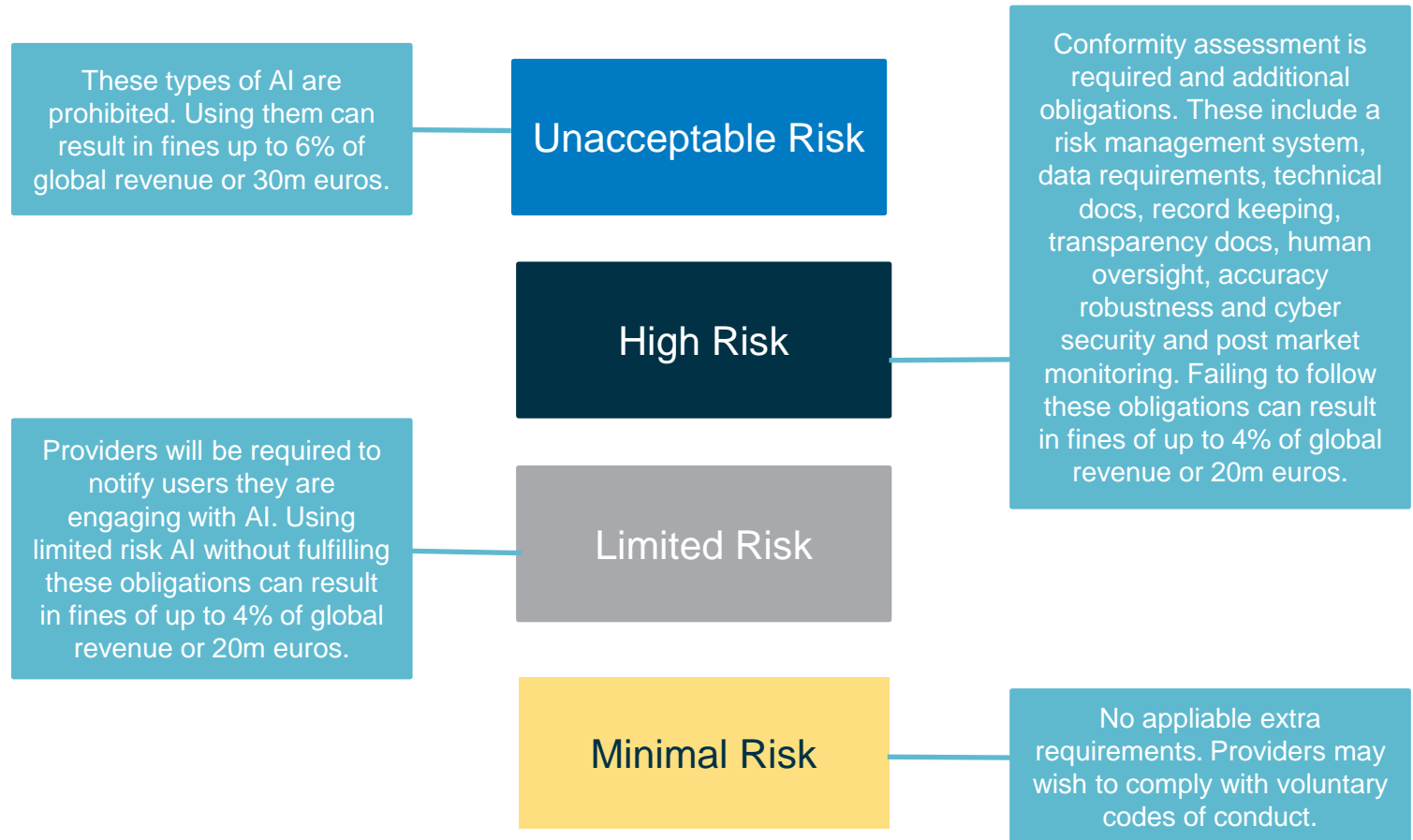


Who will it apply to?

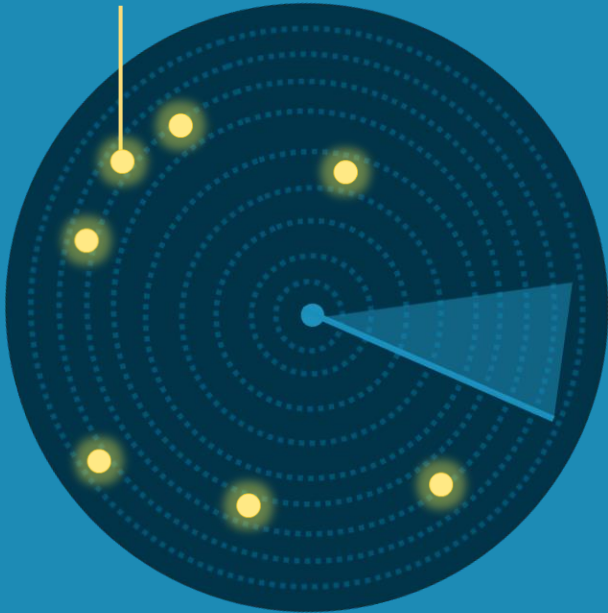
- Providers of AI systems in the EU
- Users of AI systems who are located in the EU
- Providers outside the EU where the output of the AI is used in the EU

What will it require companies to do?

Companies will need to identify the type of AI they are developing and the level of risk as described under the draft AI Act. The actions required will depend on the level of risk.



AI Liability Directive



Who will it apply to?

- Providers and developers of AI systems which will be used in the EU
- Operators and users of AI systems who are located in the EU

What will it require companies to do?

The AI Liability Directive is a newly introduced piece of draft EU legislation which will aim to make it easier for victims who are harmed for an AI system to enable them to recover damages for that harm. There are two main ways in which it does this.

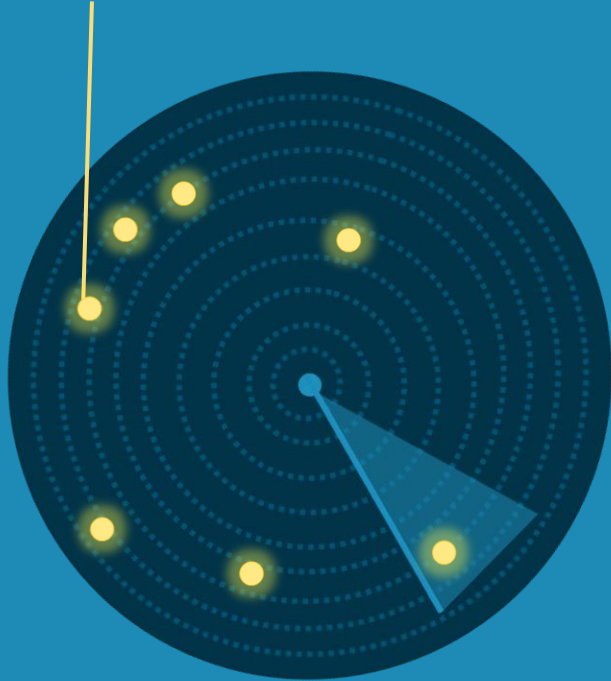
1. A '**presumption of causality**'. This means that the causal burden of proof will be **reversed**: it will be for providers to rebut a presumption that their system caused the loss claimed by the victim.

2. The introduction of the '**right of access to evidence**'. This means that victims could get information about high risk AI systems in order to help them identify who is liable for compensation.

Practical steps companies can take to prepare

- The proposed directive is closely linked with the obligations in the draft AI Act. Companies should ensure they follow this carefully.
- Take account in increased liability risks by addressing them on risk registers and risk audits.
- Keep records of safety measures taken in development of AI.
- Consider risk management steps such as insurance or putting in place contractual safeguards to recover liability from other parties in the same supply chain.

GDPR/UK GDPR



Who does it apply to?

- Anyone processing 'personal data' that has come from the UK or EU as part of their AI product
- Art 22 applies to 'automated decision making including profiling'.

What will it require companies to do?

Companies will need to identify whether they are processing any personal data from the UK and EU and take steps to comply with the GDPR/UK GDPR accordingly. The actions required for compliance depend on the data and type of processing.

Where you are processing personal data under the GDPR/UK GDPR

You will need to comply with all the obligations under the GDPR/UK GDPR as normal for example: transparency notices, doing any data protection impact assessments (DPIA) and keeping records where you make decisions as a controller.

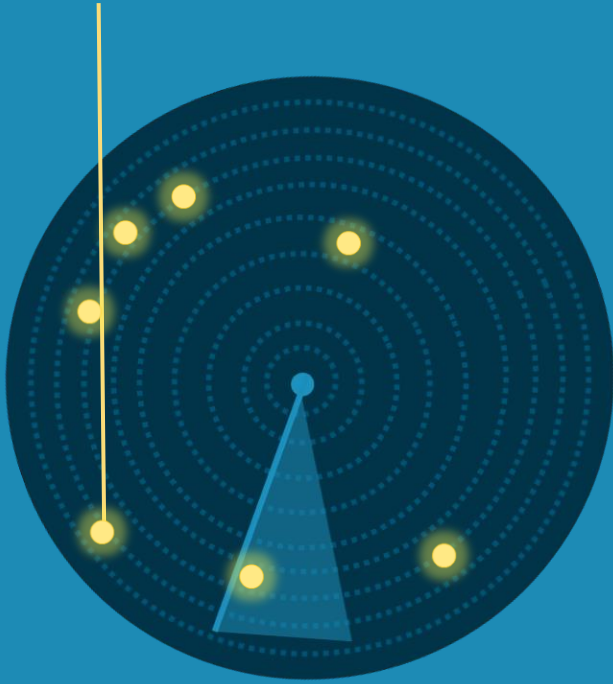
Where you are processing special category data (also known as sensitive personal data)

You will need to identify an additional legal basis and put in place additional safeguards. This is also likely to impact any DPIA you do as part of assessing whether your AI product can comply with the legislation.

Where your processing falls under Article 22 - automated decision making (ADM) and profiling

Identify the legal basis for such processing and put processes in place to allow individuals to object to ADM or profiling where required to do so by local laws. Laws in the UK and in EU Member States vary on when this requirement is triggered.

EU Digital Markets Act



Who does it apply to?

- "Gatekeeper" providers – typically "big tech" operators that have an annual turnover of 6.5 billion Euros or more in the last 3 years and more than 45 million monthly EU end users.
- DMA entered into force November 2022, applicable from May 2023, and creates a deadline for "Gatekeepers" by March 2024.

What will it require companies to do?

The DMA is designed to “ensure a competitive and fair digital sector with a view to promoting innovation, high quality digital products and services, fair prices and high quality and choice in the digital sector”.

The DMA introduces a set of obligations targeted at “gatekeeper” digital players with significant scale and reach in the EU, and provides a framework for the European Commission to amend these rules. Generally speaking the measure is targeted at “Big Tech” operators. Although its primary focus is "walled garden" eco systems, it is likely that it will apply to the providers of packaged end-to-end AI systems.

Prohibited Behaviour

- Self preferencing own services
- Preventing links to third party services
- Combination of personal data obtained from core platform services with any other service

Gatekeeper Obligations

- Permitting third parties to interoperate with gatekeeper provided services
- Permitting business users to access data they generate in their use of gatekeeper services

Merger Notifications

- Gatekeepers must notify the EU Commission of any mergers involving other core platform or digital providers – even if not generally notifiable under EU rules

EU Data Governance Act and Data Act



Who will it apply to?

- The DGA applies to the provider data sharing services where this services is offered in the EU.
- The Data Act applies to manufacturers of connected products and providers of related services that are placed on the market in the EU.

What will it require companies to do?

Transparency and notification obligations

- If you are providing data intermediary services
- If you provide a product placed on the market in the EU

Both aim to make data services more available

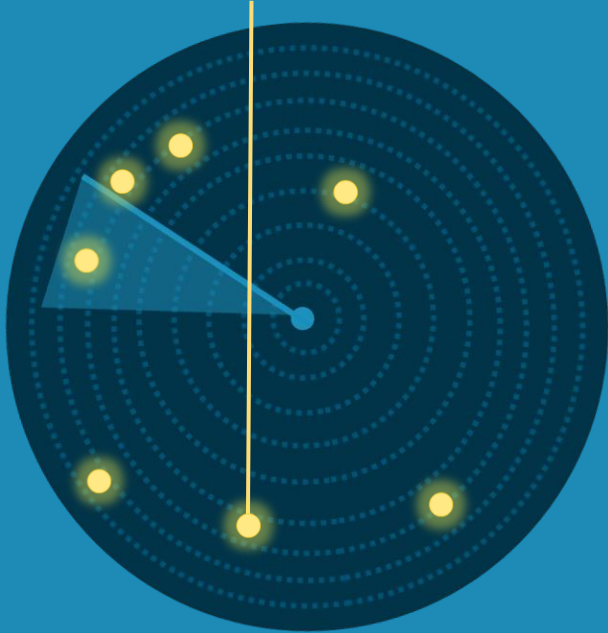
Cloud providers will have to help with switching.

Restrictions on anti-competitive/ anti-trust measures

Anti-competitive measures which limit access to data are restricted under both Acts.



Intellectual Property Rights Law and AI



Who does it apply to?

- Companies developing AI within the UK and EU or using data from the UK or EU.
- Companies wishing to protect intellectual property which was developed in the UK/EU with the assistance of an AI tool.

What will it require companies to do?

IP laws are complex and vary between the UK and EU countries, so companies will need to check on the rules of the country they are planning to launch their AI product in. This will be especially important where they are using UK or EU data or where their AI product may itself develop IP in those countries.

- Software can be protected under copyright.
- Whether data can be protected depends on various factors (e.g., whether it qualifies as a database right, or whether it is personal data).
- The UK plans to introduce a new copyright and database exception allowing for text and data mining.
- Check license terms of open-source data.
- Both the EU patent office and UK courts have ruled that AI cannot be the inventor of a patent.
- Copyright can only currently vest in the software embodying an AI algorithm and not the AI system itself.
- Output of a generative AI system may not be protected by copyright unless significantly modified by a human creator.

UK Government Policy and AI Strategy



Who will it apply to?

- Businesses developing and using AI in the UK.
- Business outside the UK, who provide products or services using AI to customers in the UK.

What will it require companies to do?

The UK Government's AI White Paper was released on 29 March 2023, outlining the UK's approach to AI (see our full insight [here](#)). In contrast to the EU, the UK is taking an alternative approach to regulation, which instead puts the onus on regulators to provide guidance and where relevant, enforcement. Businesses will need to consider the following when developing and using AI.

Consider the Principles of Trustworthy AI

- Safety, security and robustness
- Appropriate transparency and explainability
- Fairness
- Accountability and governance
- Contestability and redress

Consider sector specific considerations

Depending on the context which the AI tool is used, sector specific regulators and their guidance may be relevant. For example, the Financial Conduct Authority, the CMA's Digital Markets Unit, the Medicines and Healthcare products Regulatory Agency.

Consider general relevant legal frameworks

Regulators specialising in specific legal areas will also need to be looked to for guidance. For example: the Competition and Markets Authority, the Information Commissioner's Office, and the Equality and Human Rights Commission.

Contact Us



John Buyers
Partner, UK

E: john.buyers@osborneclarke.com

C: +44 7786 747 773

In: [linkedin.com/in/johnbuyers](https://www.linkedin.com/in/johnbuyers)



Felix Hilgert LLM
Partner, US

E: felix.hilgert@osborneclarke.com

C: +1 650 714 7773

In: [linkedin.com/in/felix-hilgert](https://www.linkedin.com/in/felix-hilgert)



Emily Barwell
Associate, US

E: emily.barwell@osborneclarke.com

C: + 1 917 741 8301

In: [linkedin.com/in/emily-barwell](https://www.linkedin.com/in/emily-barwell)

About Osborne Clarke

Our global connections and 'best friends'

Through a network of 'best friends' we extend our reach across the globe, particularly in North America, EMEA & Asia Pacific. We have worked closely with like-minded firms in over 100 countries. We'll find the right local partner for you and wherever that may be, we will make sure that you receive the Osborne Clarke level of service.

Osborne Clarke is the business name for an international legal practice and its associated businesses.

Full details here: osborneclarke.com/verein

*Services in India are provided by a relationship firm

Europe

Belgium: Brussels

France: Paris

Germany: Berlin, Cologne, Hamburg, Munich

Italy: Busto Arsizio, Milan, Rome

The Netherlands: Amsterdam

Poland: Warsaw

Spain: Barcelona, Madrid, Zaragoza

Sweden: Stockholm

UK: Bristol, London, Reading

USA

New York, San Francisco

Asia

China: Shanghai

India*: Bangalore, Mumbai, New Delhi

Singapore

1260+

talented lawyers

working with

330+

expert Partners

in

25

international locations*

advising across

8

core sectors

with

1

client-centred approach

These materials are written and provided for general information purposes only. They are not intended and should not be used as a substitute for taking legal advice. Specific legal advice should be taken before acting on any of the topics covered.

These materials are written and provided for general information purposes only. They are not intended and should not be used as a substitute for taking legal advice. Specific legal advice should be taken before acting on any of the topics covered.

© Osborne Clarke, In May 2023