

# The EU AI Act: Employment Quick Guide

A quick summary of the final text of the EU's ground-breaking AI Act, its key provisions and its relevance to employment

## What is the AIA?

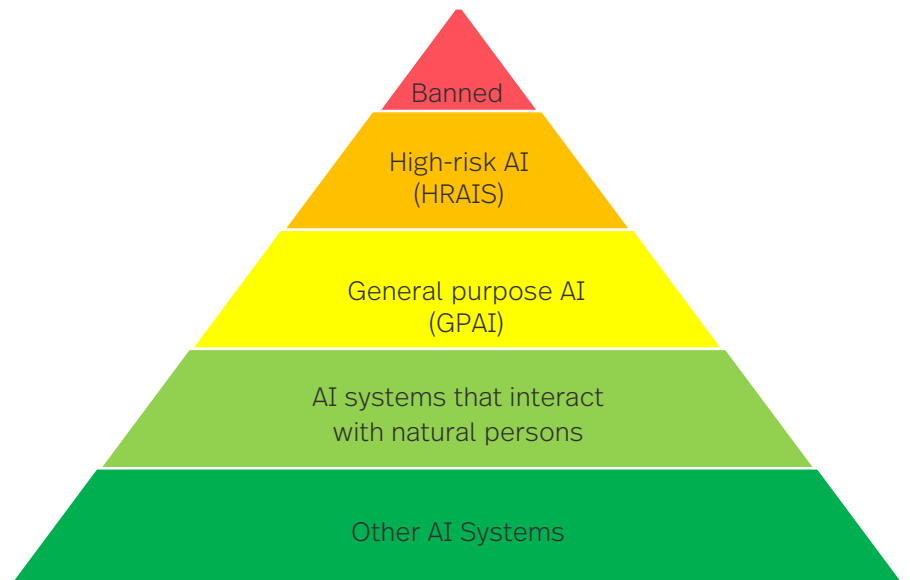
The EU AI Act (**AIA**) was endorsed by EU member states on 2 February 2024 with formal adoption expected on 10-11 April 2024.

The AIA is expected to enter into force in Q2 or Q3 2024, following which it will have a staggered implementation over a two-year time period. The legislation is likely to have a significant impact on employers that use AI in the management of their workforces in the EU.

## How will the AIA apply?

The application of the AIA depends on the AI technology involved, the use case and the role of the operator. The approach is broadly risk-based. The greater the risk, the more burdensome the obligations.

- AI systems for certain uses will be **prohibited** on the basis they present unacceptable risk.
- Certain AI systems will be designated as **high-risk AI systems (HRAIS)** and subject to extensive obligations, especially for providers.
- There will be specific provisions governing **general purpose AI (GPAI)** models, including foundation models and generative AI.
- Other AI systems are considered **minimal risk**. These systems will be subject only to **limited transparency** where they interact with individuals.



## Relevance to employment

Two categories of AI systems will be classified as high-risk within the context of employment under the AIA. These are:

- AI systems used for **recruitment or selection** processes, which includes advertising job vacancies, screening or filtering applications, and evaluating candidates during interviews or tests.
- AI systems used for **decision-making in the workplace**, including decisions about promotions, terminations, task allocation, and performance monitoring and evaluation.

There is, however, an exception for high-risk AI systems where there is "no significant risk of harm to the health, safety or fundamental rights of natural persons, including by not influencing the outcome of decision making". We expect practical guidance on this issue will likely be published during the course of 2025.

## Extraterritoriality

The AIA mandates compliance for organisations linked to the EU market. As well as deployers located in the EU, it will also apply to those outside the EU, if the *output* produced by the system affects employees in the EU. International businesses will need to decide whether to adopt AIA standards globally or reduce AI usage in the EU to circumvent the AIA's scope.

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## Obligations on deployers and providers

The majority of the obligations for HRAIS apply to “providers”, which are the companies which develop AI systems or procure them with a view to placing them on the market. In the employment context, this is likely to include vendors of HR technologies and worker management programs. An employer could also be considered a “provider” if it deploys a HRAIS under its own name or makes “substantial-modification” to a HRAIS. The obligations on “providers” of HRAIS will be extensive.

“Deployers” of AI systems (i.e. organisations that use an AI system, such as a businesses utilising HR management software) will be subject to requirements, albeit fewer. They will need to comply with:

- Completing a **fundamental rights impact assessment (“FRIA”)**;
- Taking appropriate technical / organisational measures to ensure **compliance with provider instructions**;
- Allocating properly qualified and competent **human oversight**;
- Ensuring **relevant and sufficient representative input data**;
- **Keeping record** of logs generated by the HRAIS;
- **Monitoring and reporting incidents** related to the use of HRAIS.

Employers using AI tools in the field of recruitment and decision-making will need to engage with these obligations, not least the mandatory requirement to prepare a FRIA. Employers must conduct a FRIA before deploying a HRAIS, which will involve a thorough analysis of the system's impact on individual rights, public interest and accessibility for those with disabilities.

## What actions should you take now?

You should make preparations to ensure compliance with the AIA:

- Understand and **map how the organisation is using and/or procuring AI tools** for recruitment and employment, in order to conduct a gap analysis of the legal and regulatory risk;
- **Keep up to date** with further guidance issued by local regulators;
- Work with existing/new vendors to request **due diligence** and assess the category of an AI system;
- **Satisfy yourselves about the provider's compliance** with the AIA;
- **Discuss the AIA as early as possible** with the correct internal stakeholders;
- Put in place a **governance framework** for adoption of AI systems.



**Mandy Perry**  
Partner  
T +44 20 7825 4306  
E Mandy.Perry@simmons-simmons.com



**Minesh Tanna**  
Partner  
T +44 20 7825 4259  
E Minesh.Tanna@simmons-simmons.com



**Laurie Kuijpers**  
Partner  
T +31 20 722 2337  
E Laurie.Kuijpers@simmons-simmons.com



**Jonathan Newman**  
Managing Associate  
T +44 20 7825 3903  
E Jonathan.Newman@simmons-simmons.com



**Clarence Ding**  
Partner  
T +65 6831 5 655  
E Clarence.Ding@simmons-simmons.com



**Lauren Dickinson**  
Managing Associate  
T +1 650 5757  
E Lauren.Dickinson@simmons-simmons.com