



Institut für Medien- und Informationsrecht  
Abt. 2 – Öffentliches Recht, Europäisches Informations- und  
Infrastrukturrecht  
Prof. Dr. Jens-Peter Schneider

# The Draft AI Regulation [COM(2021) 206] – a preliminary analysis from a public law perspective

ELI webinar on Regulating AI: A First Analysis of the  
European Commission's Proposal

29.4.2021

Albert-Ludwigs-Universität Freiburg

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# Outline

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1. Is the Commission Proposal relevant for public authorities using AI tools?
2. Is the regulatory approach and more specific are the conformity assessment procedures which apply to high risk AI systems (AIS) appropriate for AI systems used by public authorities?
3. Is the governance structure for implementing the legal requirements established by the draft regulation appropriate?

**Disclaimer: very preliminary analysis**

# Is the Commission Proposal relevant for public authorities using AI tools?

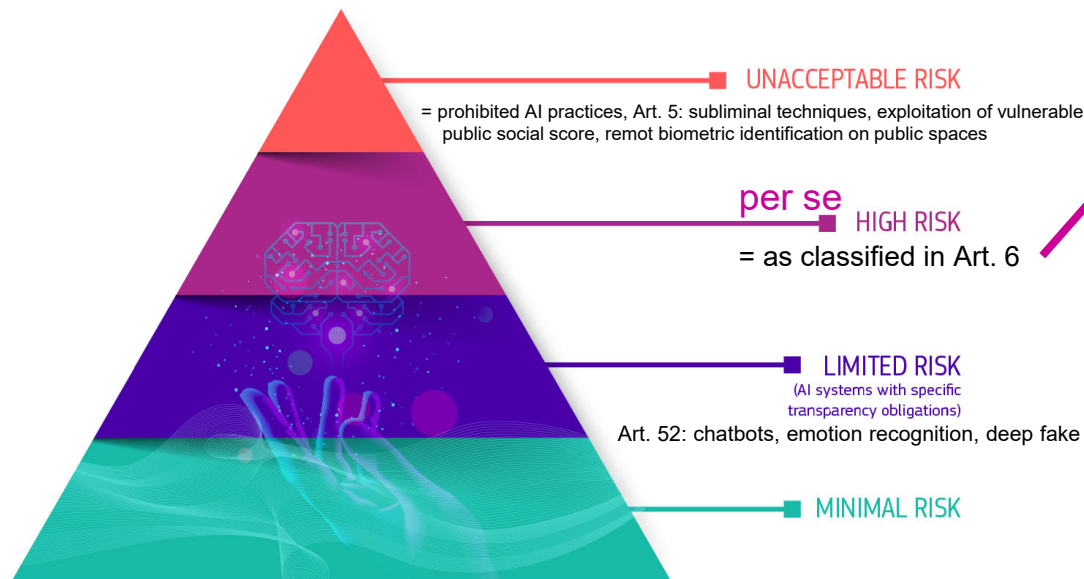


- AI-Regulation shall be applicable to providers and users
  - (both are AIS operators)
- Art 3 (2) defines “provider” inter alia as a “**public authority** [...] that develops an AI system or that has an AI system developed with a view to [...] putting it into service under its own name”
- Art 3 (4) defines “user” inter alia as “any [...] **public authority**, agency or other body using an AI system under its authority”



# Classification of high risk AI systems (= AIS)

COM(2021) 206



(1) AIS as a product (component) under general health & safety regulation

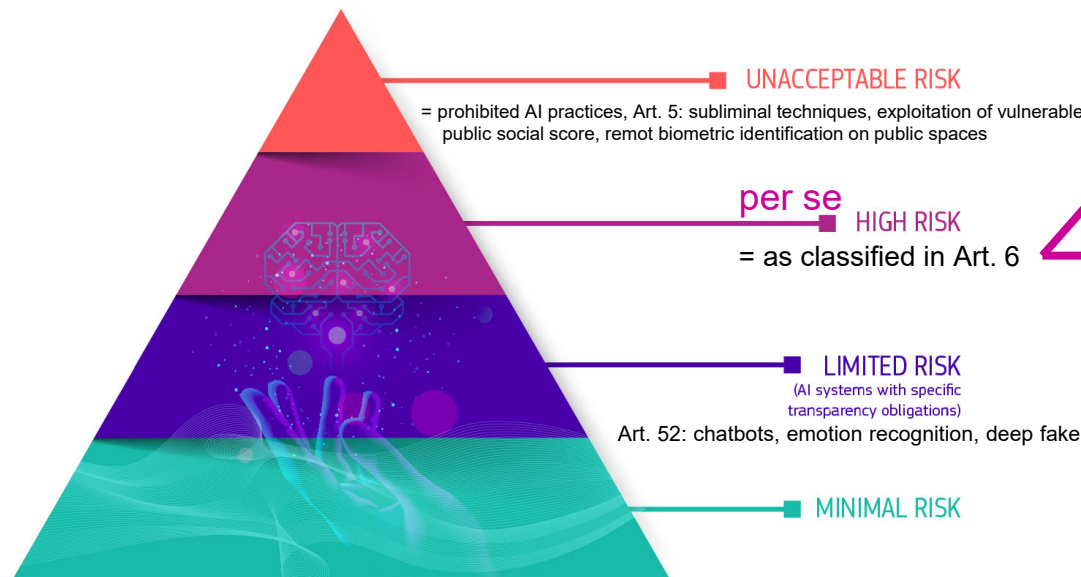
COM(2021) 205, p. 7:  
„ensuring coherence between the legal acts and simplification for economic operators”

[https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/excellence-trust-artificial-intelligence\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/excellence-trust-artificial-intelligence_en)



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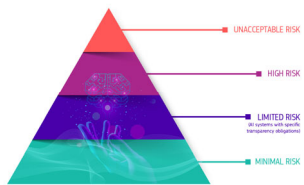
(2) → Annex III listing high-risk areas and functions

- biometric identification
- critical infrastructure
- education
- employment and staff management
- public services and benefits
- law enforcement
- migration, asylum and border control mgmt
- administration of justice

[https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/excellence-trust-artificial-intelligence\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/excellence-trust-artificial-intelligence_en)

# Conformity Assessment + ex-post surveillance

EU-DP-B. cross-sectorial coordination !?!  
 EU-B-DigS EU-AI-B. COM safeguard proc, Art 66 + Art 40, 41



external assessm. proc., Annexes III.1. (biometric) + VII  
 Notified (assessm.) body, Art. 33  
 internal control proc., Annexes III.2.-8. + VI

MS Supervisory Auth.  
 • Notifying Auth.  
 • COM contact point  
 • EU-AI-Board member  
 • Market Surveillance Auth.  
 ex-post enforcement. when „risks are present“ (Art 65, 67)

E D P S

## Participation

- experts
  - public
- access to EU-AI-Database (Art. 60(3) + Annex VIII)

!?!

Provider, Art. 16 User see Art. 28 → Art 16, 29(4)-(6) → Art 35 GDPR

- self-verified Quality Management System, Art. 17
  - design verification + control procedures
  - examination, test, validation
  - internal accountability framework
  - data mgmt. + logging
- technical standards / specifications addressing risks
- risk mgmt. system (Art 9): “acceptable” “overall residual risk”
- post-market monitoring system (Art 61): proportionate
- description of AIS (elements + develop. proc.)
- information about AIS functioning [...], in particular
  - performance capabilities + limitations incl. level of accuracy
  - foreseeable unintended outcomes + sources of risks to health & safety, fundamental rights & discrim.
  - human oversight measures incl. explainability measures
- self-assessed **Technical Documentation**  
 Art 18(1) → Art 11 + Annex IV

cross-sectorial coordination !?!

other national competent authorities

Relevant operator  
 regular systematic updating  
 monitoring

!?!



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