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# EU and UK diverge in the race to regulate artificial intelligence

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## Commentary | Invesco Global Public Policy

November 2023

The transformational capabilities of artificial intelligence (AI) are driving a lot of excitement and apprehension about the potential application of such capabilities across the economy. As AI and related innovations such as generative language tools develop apace, European policymakers are racing to get to grips with emerging opportunities and risks presented by AI, and to implement regulation that both supports the development and use of AI while safeguarding against inherent risks.

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### European Union: Proposed legislation would regulate risky AI systems

In April 2021, the European Commission issued draft legislation aiming – for the first time – to harmonise rules governing AI across the European Union (EU). In short, the European Commission proposed to define AI systems and to categorise and regulate them using a risk-based approach. The greater the risk posed by an AI system, the more stringent the rules that would apply, with an ultimate prohibition on AI systems deemed to pose an “unacceptable risk”.

While the legislation remains to be finalised, prohibited AI systems could include anything that is considered a clear threat to EU citizens. Such systems might include those that assign “social scores” to people based on their behaviours, characteristics, or personality traits, or that exploit individuals’ physical or cognitive vulnerabilities. They might also include certain AI systems that use real-time remote biometric identification in public spaces, though some specific law enforcement applications could be permitted.

**High risk systems.** The European Commission also proposed an initial list of AI systems that could potentially fall into the high risk category if they are deemed to adversely impact people’s safety or impinge on their fundamental rights. This may include any AI system intended to be used as a safety component of a product, service, or infrastructure (such as cars, medical devices, machinery), or AI systems used in the following areas:

- Biometric identification and categorisation of people
- Management and operation of critical infrastructure
- Education and vocational training
- HR management and access to employment
- Access to essential public and private services and benefits
- Law enforcement
- Migration, asylum, and border control management
- Administration of justice and democratic processes

**Limited risk systems.** AI systems deemed by the European Commission to pose limited risk – which includes chatbots and, perhaps controversially, software for creating ‘deep fake’ content – will be required to ensure that users are informed that they are interacting with, or consuming content created using AI.

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The EU regulations would vary based on the riskiness of each AI system:

- **Unacceptable risk:** These systems would be prohibited.
- **High risk:** These systems would be regulated.
- **Limited risk:** Transparency would be required.
- **Low risk:** There would be no regulatory obligations.

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**Low risk systems.** Those systems deemed to pose low or minimal risk would face no regulatory obligations.

The draft AI Act was aimed primarily at providers of AI systems used in the EU, whether they are based in the bloc or outside, as well as users located in the EU. However, it would not apply to AI systems that have been developed or used exclusively for military purposes.

To supervise and enforce the EU's new regulatory framework, the European Commission proposed the creation of a European AI Board made up of national supervisors, while EU Member States are also encouraged, where they have not already done so, to establish AI regulatory sandboxes to support innovation in this space.

Political negotiations on the EU's draft AI Act in the European Parliament and among EU Member State governments have been protracted given the high degree of national self-interest and the potential scope of the new regulatory framework. However, the legislative process has moved into the final phase, with trilogue negotiations between the EU co-legislators underway.

It is hoped that a political agreement on the EU's AI Act can be reached before the end of the year, with the bulk of new rules applying two years thereafter. Depending on how negotiations progress – and we know there are significant policy gaps to bridge between the co-legislators – we could see new rules for providers and users of AI systems in the EU apply in the first half of 2026.

In the interim, senior EU politicians are vying to fill the regulatory void.

- **The AI Pact.** The EU Commissioner for the Internal Market, Thierry Breton, has proposed an AI Pact which foresees relevant firms voluntarily complying with the requirements of the yet-to-be-finalised AI Act relating to high risk AI systems before it comes into force. It is not clear whether Breton's AI Pact will be realised, with other initiatives seemingly garnering greater political momentum.
- **The AI Code of Conduct.** The outgoing EU Commissioner for Competition, Margrethe Vestager, has agreed with counterparts in the US to cooperate on the development of a voluntary AI Code of Conduct focusing on copyright, transparency, and the threat of disinformation. According to Vestager, the transatlantic Code of Conduct could be made public "very, very soon".

It should also be noted that the EU is a signatory to the Bletchley Declaration (more on that below), alongside a handful of individual Member States, including France, Germany, Italy, and Spain.

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### **United Kingdom: The government is taking a non-legislative approach**

In March 2023, the UK government published a White Paper setting out and seeking feedback on its approach to AI regulation. Unlike the EU, the UK does not intend to legislate at this stage, but instead plans to establish a non-statutory framework requiring regulators – eventually via a statutory duty – to use their domain-specific expertise to implement and supervise against five principles designed to guide and inform the responsible development and use of AI in all sectors of the economy:

### Safety, security, and robustness

AI systems should function in a robust, secure and safe way throughout the AI life cycle, and risks should be continually identified, assessed and managed.

### Appropriate transparency and explainability

An appropriate level of transparency and explainability will mean that regulators have sufficient information about AI systems and their associated inputs and outputs to give meaningful effect to the other principles (for examples, to identify accountability).

### Fairness

AI systems should not undermine the legal rights of individuals or organisations, discriminate unfairly against individuals or create unfair market outcomes.

### Accountability and governance

Governance measures should be in place to ensure effective oversight of the supply and use of AI systems, with clear lines of accountability established across the AI life cycle.

### Contestability and redress

Where appropriate, users, impacted third parties and actors in the AI life cycle should be able to contest an AI decision or outcome that is harmful or creates material risk of harm.

The government has also proposed enhanced coordination to ensure coherence and consistency among regulators as they implement and supervise against the above these principles, including a number of key cross-cutting issues:

- Monitoring and evaluating the effectiveness of the regulatory framework and the implementation of the principles, including the extent to which implementation supports innovation.
- Assessing and monitoring risks across the economy arising from AI.
- Conducting horizon scanning and gap analysis, including by convening industry, to inform a coherent response to emerging AI technology trends.
- Supporting testbeds and sandbox initiatives to help AI innovators get new technologies to market.
- Providing education and awareness to give clarity to businesses and empower citizens to make their voices heard as part of the ongoing iteration of the framework.
- Promoting interoperability with international regulatory frameworks.

Based on feedback on these proposals, the UK government will publish an AI Regulation Roadmap including plans for implementing the principles and establishing the enhanced coordination function. The Roadmap is also expected to include plans for a new AI sandbox to complement sector-specific initiatives already taken forward by The Information Commissioner's Office (ICO) and the Financial Conduct Authority (FCA).

The UK government also recently hosted the world's first summit on AI safety, during which it coordinated agreement among participating jurisdictions, including the US, the EU, and China, on the Bletchley Declaration; a joint agenda for addressing 'frontier' AI risks (see sidebar for more details). Such risks include those stemming from the misuse of AI, or unintended consequences arising from the use of AI, in sectors such as cybersecurity and biotechnology, as well as risks stemming from the dissemination of misinformation more broadly.

Following the summit, the UK government is expected shortly to encourage domestic regulators to publish guidance on how they will apply the UK's proposed principles-based framework.

### What did we learn from November's global AI safety summit?

- Signatories to The Bletchley Declaration committed to improve international cooperation on understanding and addressing key risks relating to the use of AI, and developing related public sector capabilities and research.
- Developers of frontier AI capabilities are encouraged to enhance transparency and accountability regarding their plans to mitigate potential AI risks and avoid misuse.
- The UK and the US each announced the establishment of AI Safety Institutes, with companies including Google, Microsoft, and Meta having agreed to deepen access to their developing AI models.

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Thereafter, the UK will monitor and evaluate the implementation and continued appropriateness of its approach to AI regulation, and assess whether a legislative approach would be more effective or whether the principles-based approach should be maintained.

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### **Going Forward**

With ambitions to be global leaders in the regulation of AI, it remains to be seen whether the EU or UK – if either – gets it right. With jurisdictions such as the US moving forward with legislation, AI systems and technologies developing apace, and companies looking for supportive jurisdictions in which to establish themselves and grow, there is much at stake for global policymakers in implementing their respective regulatory approaches to AI – and getting it right first time.

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## Invesco Global Public Policy



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