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CLIENT UPDATE

THE EU AI ACT COMES INTO EFFECT- A LIKELY MODEL FOR A MEXICAN STATUTE

Background

The EU Artificial Intelligence Act (the "Act") passed through the EU legislative process and came into effect on 1 August 2024. "Prohibited" AI systems will be banned from 1 February, 2025. Other substantive requirements will come into force at staggered dates within the next two years.

Mexico is keeping track of the implementation process of the Act and it is likely to model a new statute that will consider such Act as guidance.

While "Prohibited" AI systems are clearly defined under the Act, many substantive requirements and mechanics of the Act will be made subject to pieces of secondary legislation and additional guidance over the next 24 months.

Companies doing business in Mexico should consider establishing a governance framework to ensure they are able to identify and appropriately govern covered uses of AI. This includes identifying whether any current or planned AI systems that are covered by the scope of the Act involve "prohibited" AI practices defined by the Act, and, if so, implement a plan for ending them as promptly as a statute is passed in Mexico, if not earlier.

Prohibited AI Systems

The EU AI Act contains a list of prohibited practices that will be banned within the EU from 1 February 2025, and are likely to be banned by a Mexican statute, including:

- AI systems that use biometric data for either (a) emotion recognition or (b) categorizing individuals as members of a class.
- AI systems that distort behaviour through either (a) subliminal, manipulative, deceptive techniques, or (b) exploitation of vulnerabilities due to a person's age, disability, or social or economic situation.
- AI systems that create social scores that lead to unrelated, unjustified, disproportionate, detrimental or unfavourable treatment.

- AI systems that assess or predict criminal conduct, based solely on profiling or the person's personality traits or characteristics.
- AI systems that conduct untargeted data mining of the internet or CCTV for the purposes of expanding facial recognition databases.

Exceptions exist where the AI system does not undertake profiling of individuals, and is otherwise assessed as not posing a high risk to individuals in practice. This may be met where the AI system is intended:

- To perform a narrow procedural task;

- To improve the result of a previously completed human activity;

- To compliment a previously completed human decision, rather than replacing or influencing the previous human decision without proper human review; or

- To perform only a preparatory task for an otherwise high-risk use case.

Given the relatively short timeframe before the Prohibited Risk restrictions come into force and a Mexican statute is passed, businesses should initially focus on identifying any "prohibited" AI practices, and if any are found, design a plan for ending them. As these prohibited practices are likely to be considered high risk in almost any regulated jurisdiction, it may be worth considering phasing out these uses of AI irrespective of whether businesses ultimately determine whether they fall within the scope of a Mexican incoming statute.

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Please do not hesitate to contact us with any questions.

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