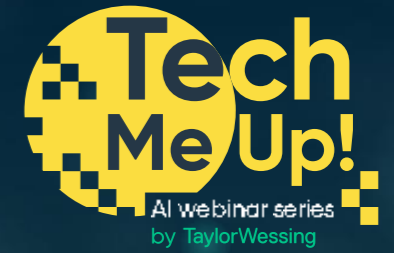


Session #4

Tech Me Up! - EU AI Act – another global law “made in Brussels”?

Dr. Axel Frhr. von dem Bussche, LL.M., Martijn Loth and Dr. Anna Zeiter | June 2024

Outline



- 1** AI Act – Introduction
- 2** AI Act – „Global“ Applicability
- 3** The European approach to AI under the AI Act
- 4** Practical consequences and To Do's



1.1. AI Act – Introduction

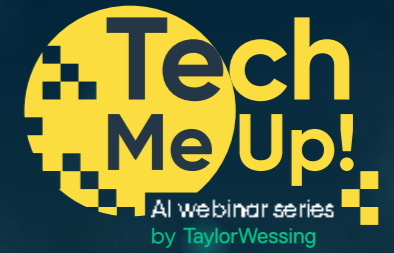
Research & Innovation	Industrial Policy	Connectivity	Data & Privacy	IPR	Cybersecurity	Law Enforcement	Trust & Safety	E-commerce & Consumer Protection	Competition	Media	Finance
Digital Europe Programme Regulation, (EU) 2021/694	Recovery and Resilience Facility Regulation, (EU) 2021/241	Frequency Bands Directive, (EEC) 1987/372	European Statistics, (EC) 2009/223, 2023/0237(COD)	Database Directive, (EC) 1996/9	Regulation for a Cybersecurity Act, (EU) 2019/891 2023/0109(COD)	Law Enforcement Directive, (EU) 2016/680	Product Liability Directive (PLD), (EEC) 1985/374, 2022/0302(COD)	Unfair Contract Terms Directive (UCTD), (EEC) 1993/13	EC Merger regulation, (EC) 2004/139, update soon	Satellite and Cable I Directive, (EEC) 1993/83	Common VAT system, (EC) 2006/112, 2022/0407(CNS)
Horizon Europe Regulation, (EU) 2021/695, (EU) 2021/764	InvestEU Programme Regulation, (EU) 2021/523	Radio Spectrum Decision, (EC) 2002/676	General Data Protection Regulation (GDPR), (EU) 2016/679	Community Design Directive, (EC) 2002/6, 2022/0391(COD)	Regulation to establish a European Cybersecurity Competence Centre, (EU) 2021/887	Directive on combating fraud and counterfeiting of non-cash means of payment, (EU) 2019/713	Toys Regulation, (EC) 2009/49, 2023/0290(COD)	Price Indication Directive, (EC) 1998/6	Technology Transfer Block Exemption, (EC) 2014/816	Information Society Directive, (EC) 2001/29	Administrative cooperation in the field of taxation, (EU) 2011/116
Regulation on a pilot regime distributed ledger tech. market, (EU) 2022/858	Connecting Europe Facility Regulation, (EU) 2021/1153	Broadband Cost Reduction Directive, (EU) 2014/61, 2023/0046(COD)	Regulation to protect personal data processed by EU institutions, bodies, offices and agencies, (EU) 2018/1725	Enforcement Directive (IPR), (EC) 2004/48	NIS 2 Directive, (EU) 2022/2555	Regulation on interoperability between EU information systems in the field of borders and visa, (EU) 2019/817	European Standardization Regulation, (EU) 2012/1025	E-commerce Directive, (EC) 2000/31	Company Law Directive, (EU) 2017/1132, 2023/0099(COD)	Audio-visual Media Services Directive (AVMSD), (EU) 2010/13	Payment Service Directive 2 (PSD2), (EU) 2015/2366 2023/0208(COD)
	Regulation on High Performance Computing Joint Undertaking, (EU) 2021/1173	Open Internet Access Regulation, (EU) 2015/2120	Regulation on the free flow of non-personal data, (EU) 2018/1807	Directive on the protection of trade secrets, (EU) 2016/943	Information Security Regulation, 2022/0084(COD)	Regulation on terrorist content online, (EU) 2021/784	eIDAS Regulation, (EU) 2014/910, 2021/0136(COD)	Unfair Commercial Practices Directive (UCPD), (EC) 2005/29	Market Surveillance Regulation, (EU) 2019/1020	Portability Regulation, (EU) 2017/1128	Digital Operational Resilience Act (DORA Regulation), (EU) 2022/2554
	Regulation on Joint Undertakings under Horizon Europe, (EU) 2021/2095, 2022/0033(NLE)	European Electronic Communications Code Directive (EECC), (EU) 2018/1972	Open Data Directive (PSI), (EU) 2019/1024	Design Directive, 2022/0392(COD)	Cybersecurity Regulation, 2022/0085(COD)	Temporary CSAM Regulation, (EU) 2021/1232, 2022/0155(COD)	Radio Equipment Directive (RED), (EU) 2014/53	Directive on Consumer Rights (CRD), (EU) 2011/83, 2022/0147(COD)	P2B Regulation, (EU) 2019/1150	Satellite and Cable II Directive, (EU) 2019/789	Crypto-assets Regulation (MiCA), (EU) 2023/1114
	Decision on a path to the Digital Decade, (EU) 2022/2481	.eu top-level domain Regulation, (EU) 2019/517	Data Governance Act (DGA Regulation), (EU) 2022/868	Compulsory licensing of patents, 2023/0129(COD)	Cyber Resilience Act, 2022/0272(COD)	E-evidence Regulation, (EU) 2023/1543	Regulation for a Single Digital Gateway, (EU) 2018/1724	e-invoicing Directive, (EU) 2014/55	Single Market Programme, (EU) 2021/690	Copyright Directive, (EU) 2019/790	Financial Data Access Regulation, 2023/0205 (COD)
	European Chips Act (Regulation), (EU) 2023/1791	Roaming Regulation, (EU) 2022/612	ePrivacy Regulation, 2017/0003(COD)	Standard essential patents, 2023/0133(COD)	Cyber Solidarity Act (Regulation), 2023/0109(COD)	Directive on combating violence against women, 2022/0066(COD)	General Product Safety Regulation, (EU) 2023/898	Geo-Blocking Regulation, (EU) 2019/302	Vertical Block Exemption Regulation (VBER), (EU) 2022/720	European Media Freedom Act, 2022/0277(COD)	Payment Services Regulation, 2023/0210(COD)
	European critical raw materials act (Regulation), 2023/0079(COD)	Regulation on the Union Secure Connectivity Programme, (EU) 2023/588	European Data Act (Regulation), 2022/0047(COD)			Digitalization of travel documents	Machinery Regulation, (EU) 2023/1230	Regulation on cooperation for the enforcement of consumer protection laws, (EU) 2017/2394	Digital Market Act (DMA Regulation), (EU) 2022/1925	Remuneration of musicians from third countries for recorded music played in the EU	Digital euro, 2023/0212 (COD)
	Net Zero Industry Act, 2023/0081(COD)	New radio spectrum policy programme (RSPP 2.0)	European Health Data Space (Regulation), 2022/0140(COD)				AI Act (Regulation), 2021/0106(COD)	Digital content Directive, (EU) 2019/770	Regulation on distortive foreign subsidies, (EU) 2022/2560		Regulation on combating late payment, 2023/0323(COD)
	Establishing the Strategic Technologies for Europe Platform (STEP), 2023/0199(COD)	Digital Networks Act	Regulation on data collection for short-term rental, 2022/0358(COD)				Eco-design Regulation, 2022/0095(COD)	Directive on certain aspects concerning contracts for the sale of goods, (EU) 2019/771	Horizontal Block Exemption Regulations (HBER), (EU) 2023/1066, (EU) 2023/1067		
	EU Space Law		Interoperable Europe Act, 2022/0379(COD)				AI Liability Directive, 2022/0303(COD)	Digital Services Act (DSA Regulation), (EU) 2022/065	Platform Work Directive, 2021/0414(COD)		
	Initiative to open up European supercomputer capacity to AI start-ups		Harmonization of GDPR enforcement 2023/0202(COD)					Political Advertising Regulation, 2021/0381(COD)	Single Market Emergency Instrument (SMEI), 2022/0278(COD)		
			Access to vehicle data, functions and resources					Right to repair Directive, 2023/0083(COD)			
			GreenData4all					Multimodal digital mobility services (MDMS)			
								Consumer protection: strengthened enforcement cooperation			



Overview of EU legislation in the digital sector

Applicable law	Published in the Official Journal of the European Union
In negotiation	Proposal by the European Commission entered the legislative process.
Planned initiative	Mentioned by the European Commission as potential legislative initiative

Overview: “Digital Basic Laws”



AI Act



What is it about?

- First AI regulation worldwide: protection of fundamental rights (health, safety) and support innovation
- “Product Compliance”, market surveillance and monitoring

When?

- Entry into force: adoption expected May or June 2024
- **Applicability mid 2026** (most provisions)

Threat of sanctions?

- Fines of up to 30 million euros or up to 6% of the worldwide annual turnover
- Regulatory restriction or even prohibition of the provision of AI systems



1.2. AI Act – “Global” Applicability

Definition of AI Systems



Scope



Article 2

(1) This Regulation applies to:

- (a) providers placing on the market or putting into service AI systems or placing on the market general-purpose AI models in the Union, irrespective of whether those providers are established or located within the Union or in a third country;
- (b) deployers of AI systems that have their place of establishment or are located within the Union;
- (c) providers and deployers of AI systems that have their place of establishment or are located in a third country, where the output produced by the AI system is used in the Union;

[...]

Scope

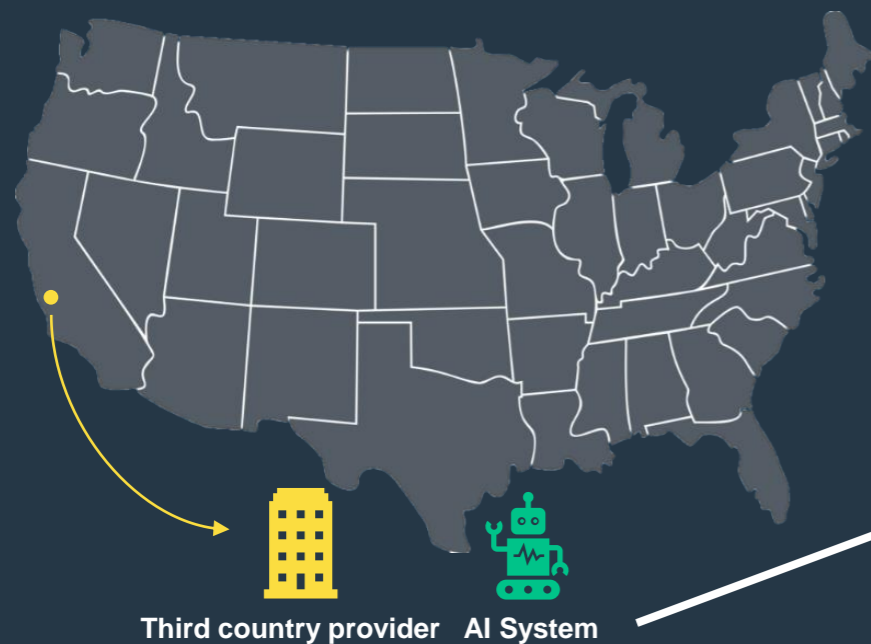
Who is concerned?

- Providers of AI systems (central addressee)
- Importers and distributors
- Deployers

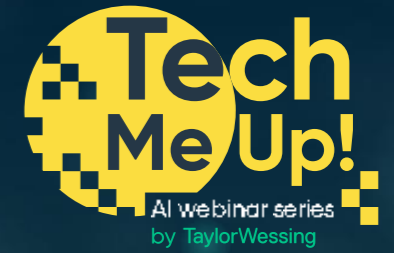
Where does the AI Act apply?

- Extraterritorial approach

Use Case 1



Authorised representatives



Article 22

- (1) Prior to making their high-risk AI systems available on the Union market, providers established in third countries shall, by written mandate, appoint an authorised representative which is established in the Union.
- (2) The provider shall enable its authorised representative to perform the tasks specified in the mandate received from the provider.

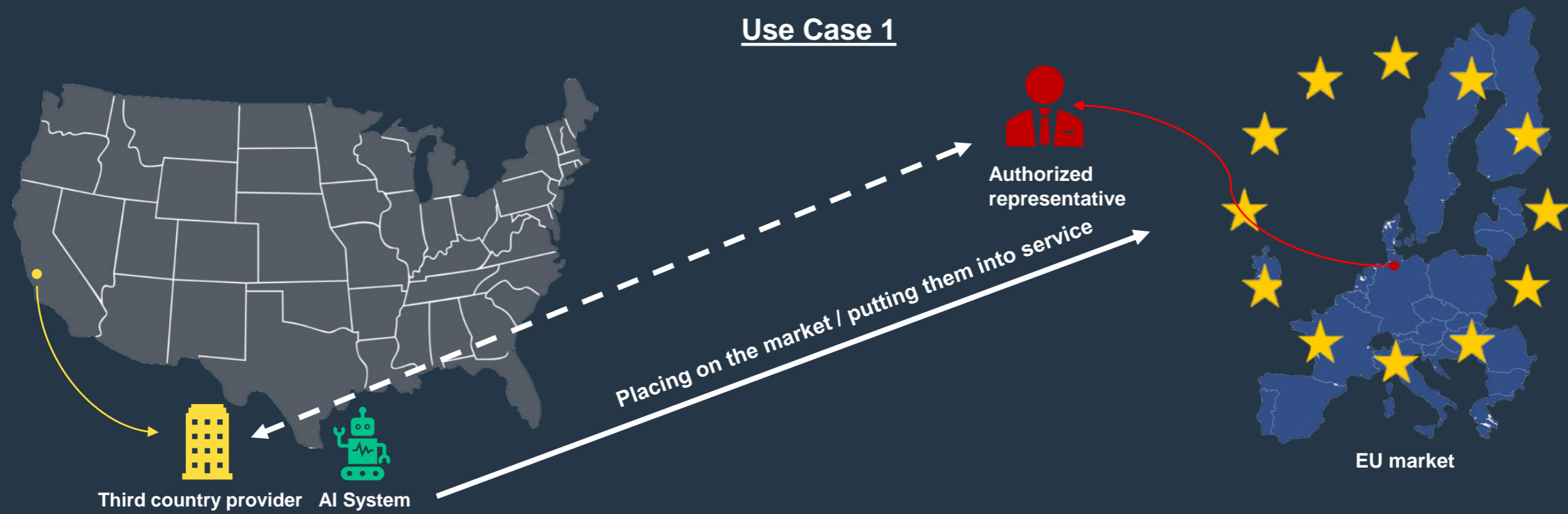
[...]

AI Act – Who is affected?

Where does the AI Act apply? – Extraterritorial approach

- To third country providers of AI systems that place their AI system on the EU-market or put them into service in the EU

Use Case 1

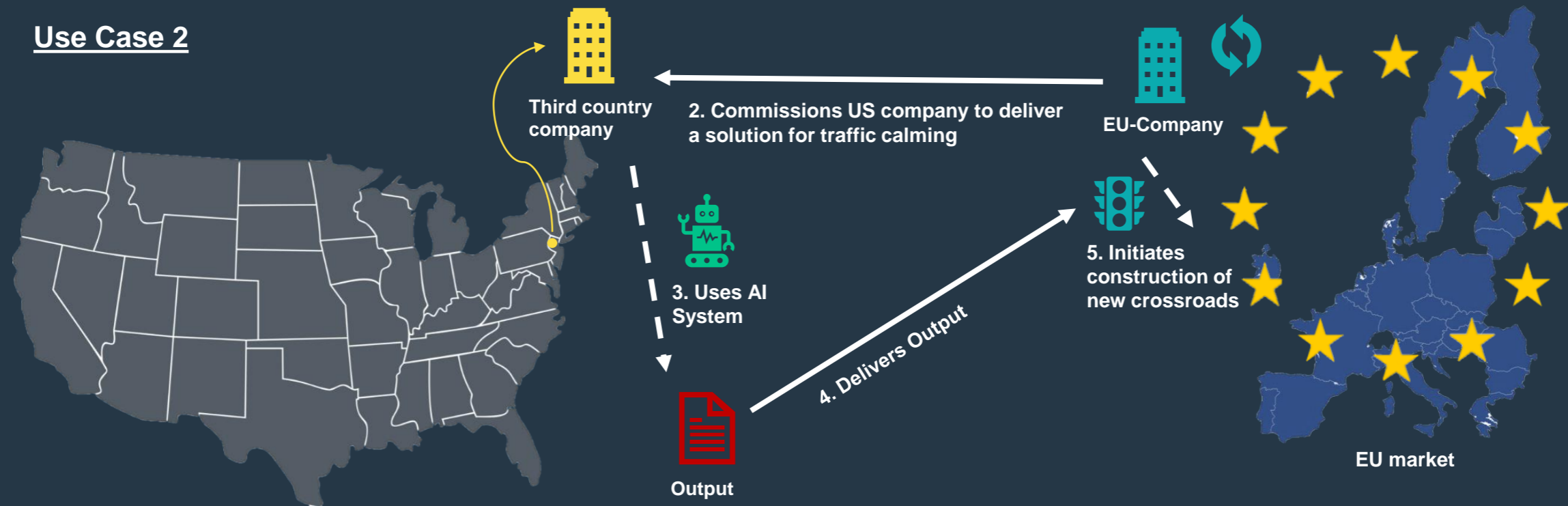


AI Act – Who is affected?

Where does the AI Act apply? – Extraterritorial approach

- To third country providers of AI systems that place their AI system on the EU-market or put them into service in the EU

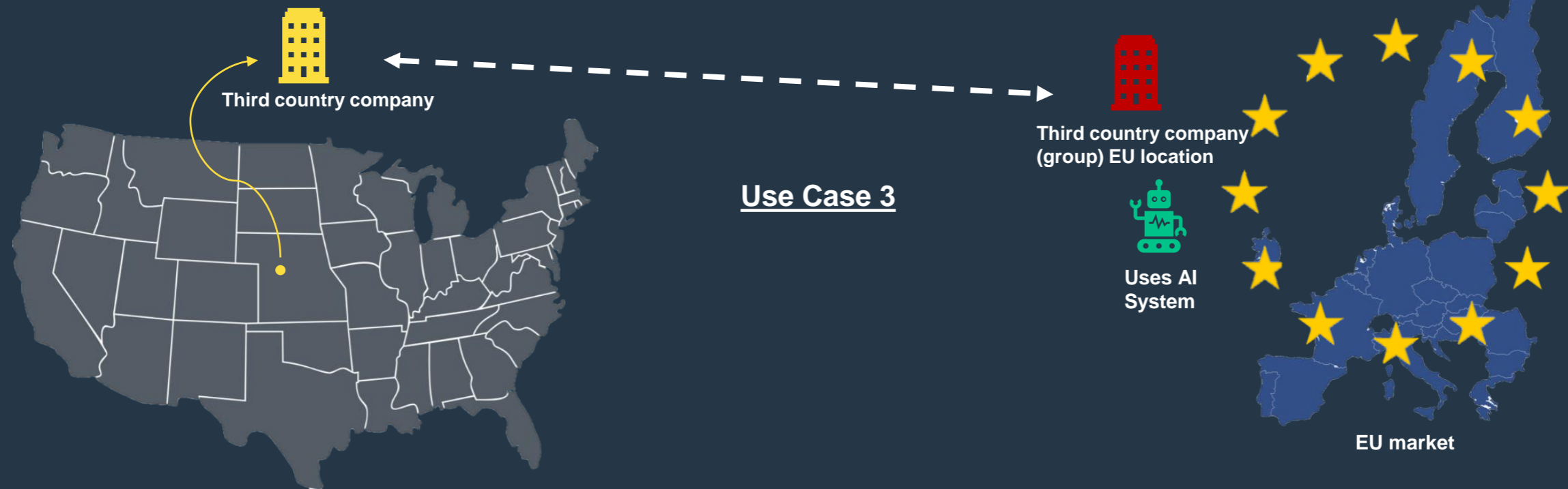
Use Case 2



AI Act – Who is affected?

Where does the AI Act apply? – Extraterritorial approach

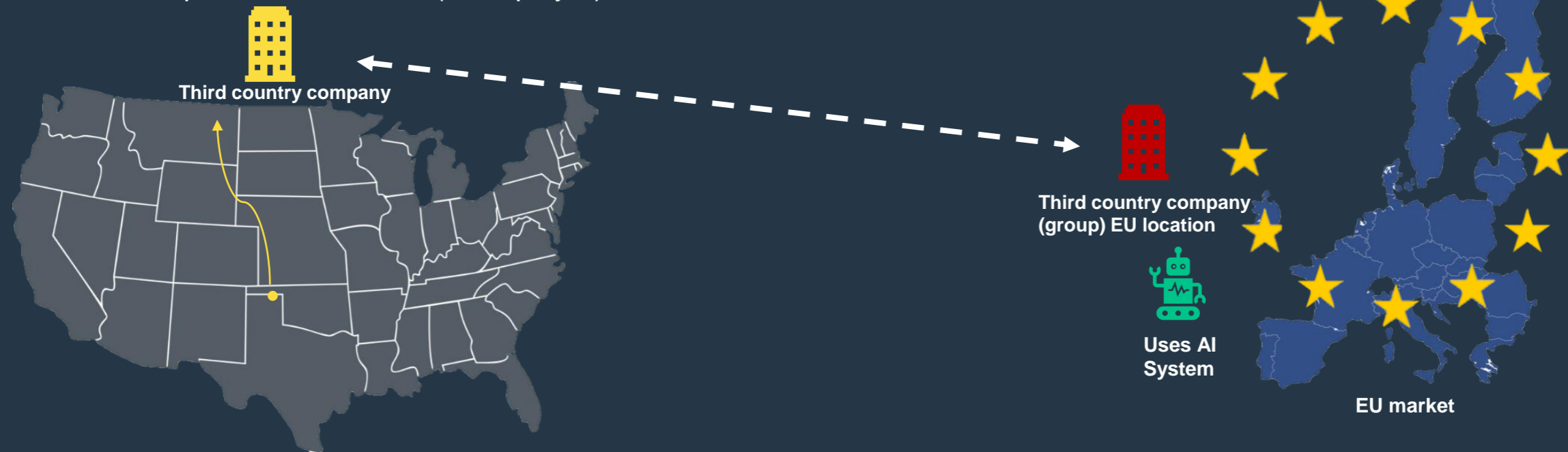
- To third country providers of AI systems that place their AI system on the EU-market or put them into service in the EU
- To third country providers / deployers using AI systems in the US to provide the output to an EU operator

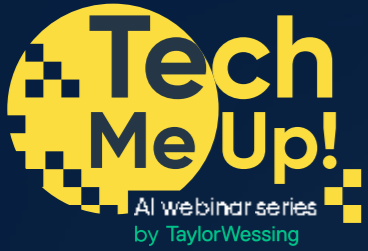


AI Act – Who is affected?

Where does the AI Act apply? – Extraterritorial approach

- To US-Providers of AI systems that place their AI system on the EU-market or put them into service in the EU
- To US-Providers / Deployers using AI systems in the US to provide the output to an EU operator
- To US-Companies EU location (as deployer)





1.3. The European approach to AI under the AI Act

AI Act – Risk based approach



Banned applications:

- Manipulative AI
- Exploitative AI
- Social Scoring
- Predictive Policing
- Risk assessments
- Facial recognition databases
- Emotion recognition (workplace / school)
- Biometric categorisation systems
- Real time biometric identification systems (but extensive exceptions for law enforcement)



AI Act – Risk based approach



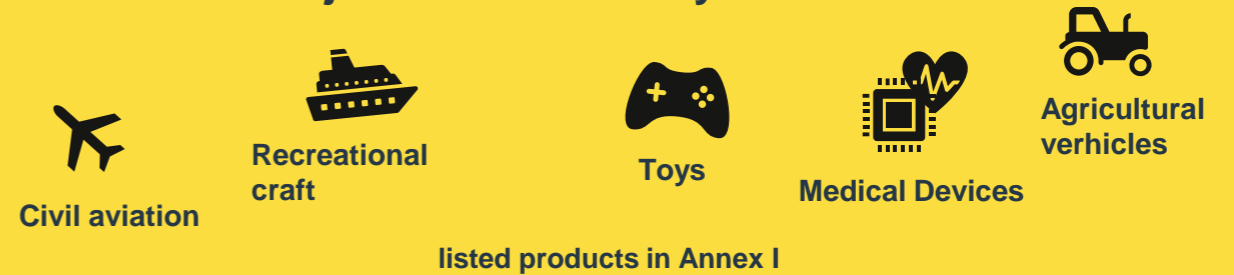
High Risk AI:

Embedded AI

Safety component of a product or the product itself

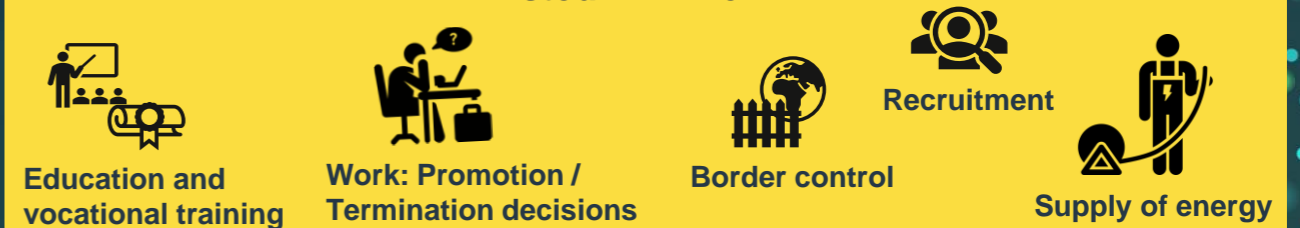
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Subject to a conformity assessment



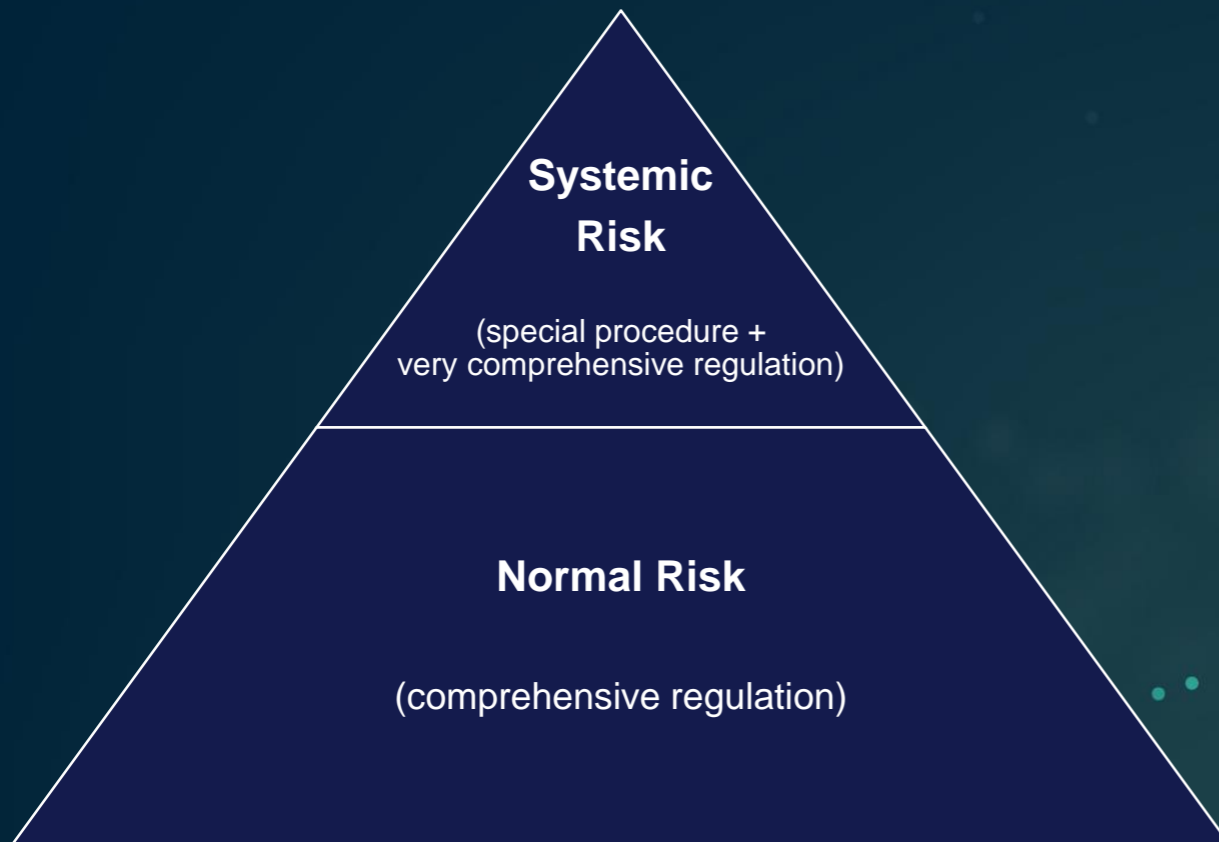
Non-embedded AI

Listed in Annex III

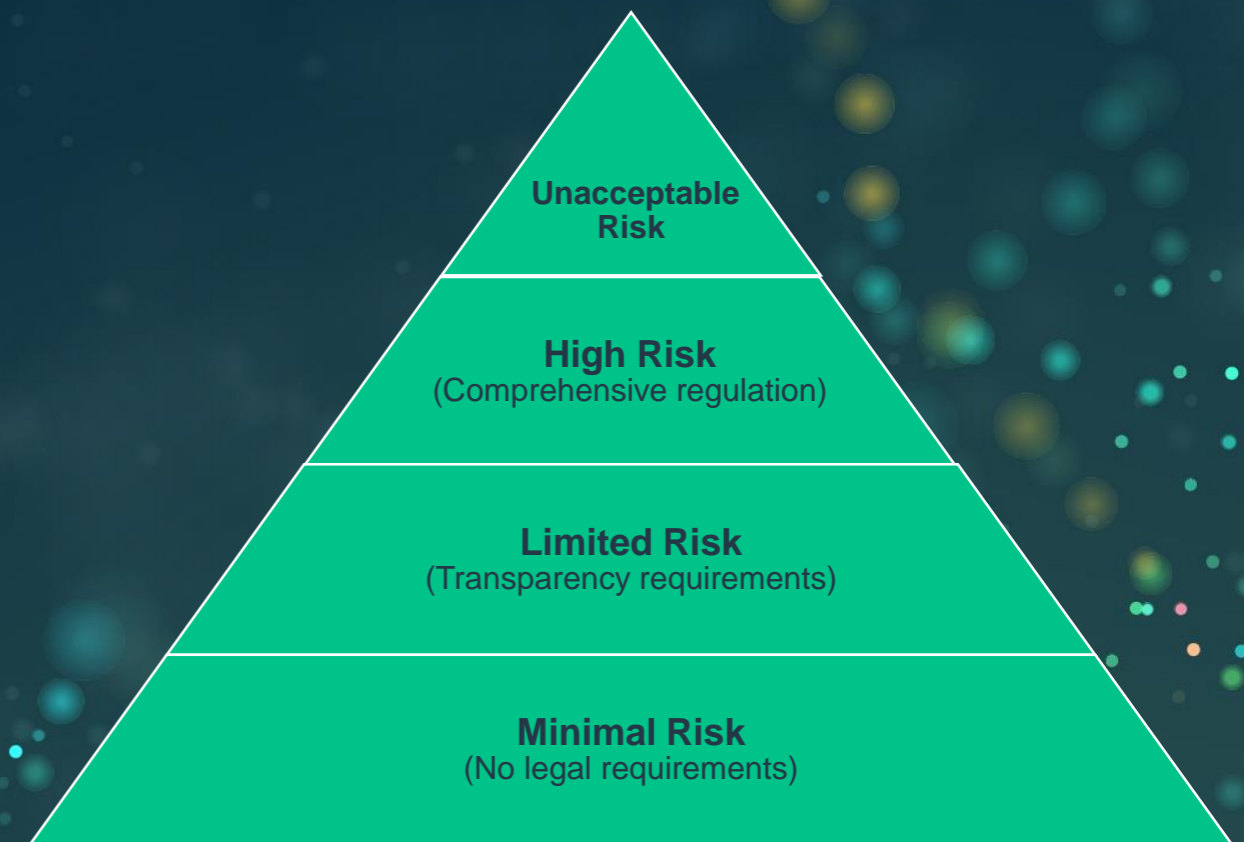


AI Act – Risk based approach

Risk assessment: General-purpose AI Models



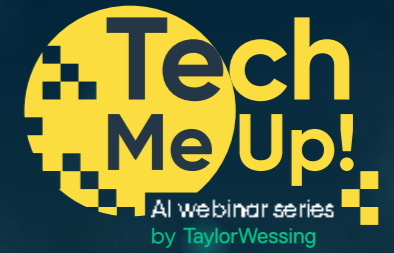
Risk assessment: AI Systems / General-purpose AI Systems





1.4. Practical consequences and To Do's

AI Act requirements – a brief overview



General-purpose AI Models

„Normal“ GPAI models:

- Technical documentation
- Copyright compliance
- Detailed summaries
- Code of practice

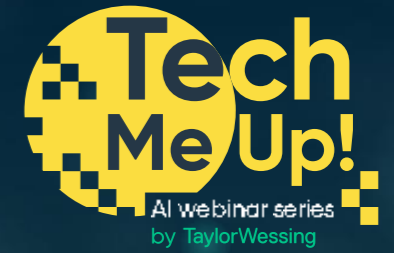
High-impact GPAI models (systemic risk):

- Model evaluations & Adversarial testing
- Systemic risk assessment & Cybersecurity measures
- Reporting serious incidents & Energy efficiency reporting

High-risk-AI Systems

- Documentation
- Quality
- Transparency
- Risk management
- Human oversight
- Cybersecurity measures
- Fundamental rights impact assessment
- Conformity assessment

Current legal AI issues



Copyright Law

- Is the AI only trained using content that falls under “fair use”, or did the AI use copyrighted material of the internet?
- Is AI generated content protected under copyright?

Data Protection Law

- Lack of legal basis for processing for the data collected to train the AI.
- Issues with core principles of the GDPR (transparency, purpose limitation and data minimisation, accuracy, and storage limitation).

Confidential Information

- Training data may infringes secret information (e.g. AI translation of secret agreements)

AI Act – To Do's



1. Audit: Applicability AI Act

- Developed Software = AI system / GPAI model or system?
- Scope of application (extraterritorial approach)



2. Risk classification

- GPAI model risk classification
- AI system risk classification



3. Preparation for regulatory actor-specific obligations

- Provider / Deployer?
- Conformity assessment (Compliance with AI requirements)
- Appointment authorized representative



4. Market Launch & post-market surveillance

- CE-Declaration
- Post-market surveillance as required
- Recertification in the event of significant deviations

Don't forget GDPR



Q&A



Speakers



Martijn Loth
Counsel,
Taylor Wessing

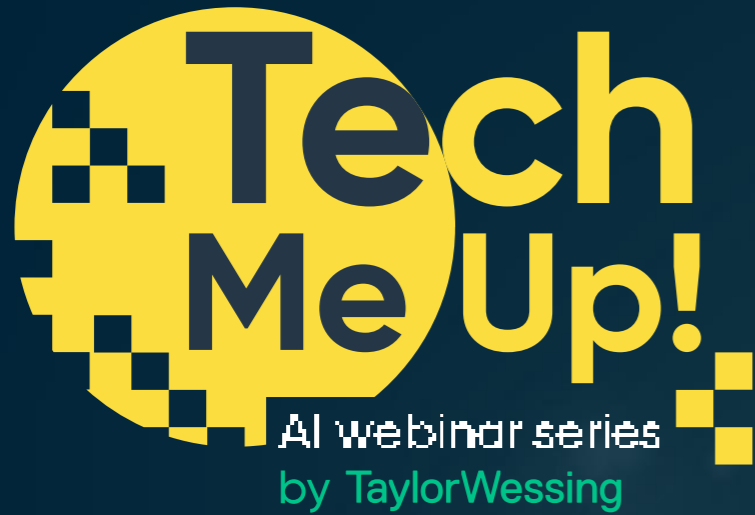


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