

## CCBE response to the targeted stakeholder consultation on the implementation of the AI Act's rules for high-risk AI systems

20 September 2025

1. Pursuant to Article 6(5) AI Act, the Commission is required to provide guidelines specifying the practical implementation of Article 6, which sets out the rules for high-risk classification, by 2 February 2026. It is further required that these guidelines should be accompanied with a comprehensive list of practical examples of use cases of AI systems that are high-risk and not high-risk.
2. The Commission has therefore launched a targeted [public consultation](#) in which it seeks stakeholders' views on the level of risk of concrete use cases. The consultation was launched on 6 June and the deadline for submissions is 18 July.
3. The topic is of importance to the profession as this could have an impact on the outcome of what is classified as a high-risk use of AI systems in the justice system.
4. The draft response follows the format and questions in the consultation.
5. The AI Act's Article 6(2) envisages two types of AI systems that are considered high-risk, one of which are AI systems listed in Annex III, such as AI used in education, employment, credit scoring, law enforcement, migration and the [justice system](#) and democratic process.
6. Article 6(3) provides for a derogation to the above strict high-risk classification by excluding from that classification systems which do not *'pose a significant risk of harm to the health, safety or fundamental rights of natural persons, including by not materially influencing the outcome of decision making.'*
7. In order for the derogation above to apply, it must fulfil any of the following criteria:
  - a. the AI system is intended to perform a narrow procedural task;
  - b. the AI system is intended to improve the result of a previously completed human activity;
  - c. the AI system is intended to detect decision-making patterns or deviations from prior decision-making patterns and is not meant to replace or influence the previously completed human assessment, without proper human review; or
  - d. the AI system is intended to perform a preparatory task to an assessment relevant for the purposes of the use cases listed in Annex III.

Importantly, the last part of Article 6(3) states that: *'Notwithstanding the first subparagraph, an AI system referred to in Annex III shall always be considered to be high-risk where the AI system performs profiling of natural persons.'*

**Questions in relation to Annex III of the AI Act. (Section 2)**

**2.F Questions in relation to law enforcement (Annex III, point 6)**

**Question 24. Please provide practical examples of AI systems that in your opinion may fall within the scope of high-risk AI systems listed in the area of law enforcement in Annex III.**

Name/description	Category	High-risk	Explain	Profiling	Exception	Explain
Predictive policing	Assessing victim risk in law enforcement (point 6a)	Yes completely	AI systems that are used to influence, inform and assist law enforcement and criminal justice decisions through predictions, profiles and risk assessments often have technological (black boxes, neural networks) or commercial barriers (intellectual property, proprietary technology) that prevent effective and meaningful scrutiny, transparency, and accountability. It is crucial that individuals affected by these systems' decisions are aware of their use. By their nature, these systems therefore undermine the fundamental right to be presumed innocent, shifting criminal justice attention away from criminal behaviour towards vague and discriminatory notions of risk and suspicion. The outputs of these systems are therefore not reliable evidence of actual or prospective criminal activity and should never be used as justification for any law enforcement action, such as an arrest, let alone be submitted in criminal proceedings.	Yes	No	The CCBE has advocated in the past for such practices to be prohibited.
Risk assessment	Assessing re-offending risk in law enforcement	Yes completely	AI systems that are used to influence, inform and assist law enforcement and criminal justice decisions through predictions, profiles and risk assessments often have technological (black boxes, neural networks) or commercial barriers (intellectual property, proprietary technology) that prevent effective and meaningful scrutiny, transparency, and accountability. It is crucial that individuals affected by these systems' decisions are	Yes	No	The CCBE has advocated in the past for such practices to be prohibited.

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\* The CCBE has commented in the past on these use cases and, together with the civil society representatives, called for their ban (position paper with [Fair Trials and EDRi from 2022](#))

**2.H. Questions in relation to administration of justice and democratic processes (Annex III, point 8)**

**Question 31. Please provide practical examples of AI systems that in your opinion may fall within the scope of high-risk AI systems listed in the area of administration of justice and democratic processes in point (8) of Annex III.**

*Examples may include systems for which you have uncertainties or system that you consider should not be considered high-risk as they are outside the use cases listed in Annex III or they fulfil one or more of the conditions for the exceptions in Article 6(3) AI Act.*

	Name/description	High-risk	Explain	Profiling	Exception	Explain
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1.	A court of law uses an AI System for its intended purpose, namely to find relevant case law, legal literature, and other legal sources. The judge uses the outcome of the AI system.	Yes completely	The use case falls within the scope of item 8(a) although the wording of point 8a leaves it unclear whether the AI System must be used directly on specific facts. The potential risks include hallucinations of case citations, interpretations of legal rules or literature sources.	No	No	<p>It may be unclear from the current wording of point 8 whether it is exempt pursuant to EU AI Act's Article 6(3)(a) and (d). However, the CCBE thinks it should be a high-risk use case due to the risk of rubber-stamping the decisions and the risk of miscarriage of justice.</p> <p>Courts must understand the law which can include doing their own research. For example, courts must ensure that they do not make rulings that conflict with the law (e.g. upholding an agreement that violates anti-trust law), even where the parties fail to argue the point.</p> <p>If the court does not disclose the legal sources obtained independently by the court to the parties in the case and allow them to address it before making the ruling, it might well cause harm to fundamental rights, especially if the ruling cannot be appealed.</p>
2.	A judge uses an AI system to review his draft judicial decision for errors in translations, spelling and grammar.	No	The use case does not involve any "researching and interpreting facts and the law and in applying the law to a concrete set of facts", and involves little or no real risk to fundamental rights, etc.	No	Yes	Even if it was considered to be encompassed, it would be exempted pursuant to the EU AI Act's Article 6(3)(a) and (b).
3.	A judge uses an AI system to review the written submissions and exhibits in a court case and then make a draft judicial decision which the judge then reviews and approves.	Yes completely	The use case is encompassed by the wording of point 8a and seemingly also the intent.	No	No	
4.	An AI system is used by a public prosecutor to review large volumes of investigative material (e.g., interview transcripts, surveillance data, digital evidence) and to select and prioritise	Yes completely	In our view, this is a high-risk case under Article 6 and Annex III.8 (at least in those countries where the Public	No	No	We do not believe it could fall under the exceptions provided for in Article 6(3), given that the investigative elements submitted by the Public Prosecutor with the support of

	elements from the preliminary investigation that are deemed most relevant to support a request for precautionary measures. The system ranks this material based on its estimated probative value or relevance to precautionary needs. The resulting selection is then submitted by the prosecutor to a judge as part of the formal request.		Prosecutor can be qualified as a "judicial authority").			such a system would directly influence the judge's decision. In this case as well, we do not believe that Article 22 of the GDPR would provide adequate safeguards (at least formally, the judge's decision would not be based solely on automated processing).
5.	A court-appointed expert is tasked with producing a report on factual findings for the court. The expert uses an AI system to examine the documentation and prepares an expert report about the factual findings. The expert then submits the report to the court.	Yes completely	The case falls within the intent and wording of the EU AI Act's Article 6(2) and Annex III, item 8(a). In particular, the court-appointed expert might be said to use the AI System on the court's instructions "to assist [the court] in researching and interpreting facts and the law and in applying the law to a concrete set of facts". The reports submitted by the experts are often determinative of the outcome of the proceedings and relied on by the judges. The potential risks include hallucinations of case citations, interpretations of legal rules or literature sources.	No	No	We do not believe it could fall under the exceptions provided for in Article 6(3), given the role of the court-appointed experts and the fact that their opinion can be decisive to the court's decision. Therefore matters how they arrived to their conclusions. Concerning profiling (as interpreted by the CJEU in C-634/21 SCHUFA), in our view, it could be considered in the described use case insofar as the subject of the expert report is an individual (e.g. if the court expert evaluates the state of health of a natural person).
6.	An attorney appointed by the court as the trustee in a bankruptcy estate uses an AI System for its intended purpose, namely to prepare a recommendation to the bankruptcy court regarding the commencement of a disqualification order against the former management of a defunct company.	No	The recommendation prepared by the attorney is not prepared (nor filed) "on behalf of the court". However, the CCBE has not been able to determine the exact situation in all 27 jurisdictions.	No	Unsure	

7.	A party-appointed expert is tasked by a party to a threatened or pending court dispute with examining two technologies for purposes of assisting the party in proving that the other party's technology infringes the patent rights of the appointing party. The expert prompts an AI System to examine the documentation on the technologies involved and prepare an expert report explaining the technologies and determining how they are similar. The party then submits the report to the court.	No	The use case is not encompassed by the intent and wording of the EU AI Act's Article 6(2) and Annex III, item 8(a). In particular, the party appointed expert does not use the AI System "on [the court's] behalf to assist [the court] in researching and interpreting facts and the law and in applying the law to a concrete set of facts".	No	Yes	Even if it was considered to be encompassed, it would be exempted pursuant to the EU AI Act's Article 6(3)(a) and (d). Also, the adversarial system means that the attorney representing the other side will review and address the submitted report, and that the court will apply the usual scepisis in respect of any party submission.
8.	An attorney uses an AI System for its intended purpose, namely to prepare a complaint or other legal submission which the attorney files in a court of law.	No	The use case is not encompassed by the intent and wording of the EU AI Act's Article 6(2) and Annex III, item 8(a). In particular, the attorney does not use the AI System "on [the court's] behalf to assist [the court] in researching and interpreting facts and the law and in applying the law to a concrete set of facts".	No	Yes	Even if it was considered to be encompassed, it would be exempted pursuant to the EU AI Act's Article 6(3)(a) and (d).
9.	An attorney uses an AI System for its intended purpose, namely to find relevant case law, legal literature and other legal sources. Unknown to the attorney, the AI System hallucinates some or all of the legal sources. The attorney presents the faulty legal sources to a court of law and argues the case based on it.	No	The use case is not encompassed by the intent and wording of the EU AI Act's Article 6(2) and Annex III, item 8(a). In particular, the attorney does not use the AI System "on [the court's] behalf to assist [the court] in researching and interpreting facts and the law and in applying the law to a concrete set of facts".	No	Yes	Even if it was considered to be encompassed, it would be exempted pursuant to the EU AI Act's Article 6(3)(a) and (d).
10.	An attorney appointed as the trustee in a bankruptcy estate uses an AI System for its intended purpose, namely to prepare a circular to the creditors of the estate which is to be circulated in certain intervals (according to the Danish Insolvency Act).	No	The circular prepared by the attorney is not prepared (nor filed) "on behalf of the court". However, the CCBE has not been able to determine the exact situation in all 27 jurisdictions.	No	No	

11.	Parties to an arbitration agree that all witness testimony will be with AI-based transcription and translation of language (instead of an appointed court reporter and translator) in order to save costs.	Unsure	The use case is not encompassed by the intent and wording of the EU AI Act's Article 6(2) and Annex III, item 8(a). In particular, the arbitral tribunal does not use the AI System "in researching and interpreting facts and the law and in applying the law to a concrete set of facts". However, the high risk qualification may depend on how the transcriptions and translations are treated later on. If they are considered to reflect the official record of the hearing, the cost saving may have an impact on interpreting the facts.	No	Unsure	Even if it was considered to be encompassed, it would need to be evaluated pursuant to the EU AI Act's Article 6(3)(a) and (d).
12.	Two parties file for arbitration in accordance with the New York Arbitration Convention and make all submissions. They then agree on a settlement process where they have an AI system review all submissions, interpret the facts and law, and make a determination. The outcome, i.e. the settlement agreement created through this process, is submitted to the arbitral tribunal with the purpose of the tribunal giving an enforceable award accordingly (i.e. as normal done with settlements during arbitration). Thereby the AI systems' ruling becomes binding and enforceable between the parties in all jurisdictions that are party to the New York Arbitration Convention.	No	The use case is not encompassed by the intent and wording of the EU AI Act's Article 6(2) and Annex III, item 8(a). In particular, the arbitral tribunal does not use the AI System "in researching and interpreting facts and the law and in applying the law to a concrete set of facts". Furthermore, it is common for parties to arbitration to settle the matter amicably during the process and have the settlement entered into an enforceable award; most often, the tribunal receives little or no insight into how the parties arrived at their settlement solution (e.g. whether they flipped a coin). It is not part of the process conducted by a tribunal.	No	Unsure	

13.	A factual witness is called to give testimony before a court of law. In their private preparation for the testimony, the witness prompts an AI System with reviewing relevant materials available to the witness (e.g. exhibits involving the witness) and asking the witness relevant factual questions. The AI System inadvertently hallucinates facts and manipulates the witness to change her recollection of events.	No	<p>The use case is not encompassed by the intent and wording of the EU AI Act's Article 6(2) and Annex III, item 8(a). In particular, the factual witness does not use the AI System "on [the court's] behalf to assist [the court] in researching and interpreting facts and the law and in applying the law to a concrete set of facts".</p> <p>While the fact-pattern is concerning, the risk that witnesses misremember facts and events is always present in court cases. The court and the parties may through questioning and presentation of evidence help the witness to correctly remember the relevant facts.</p>	No	Yes	It is not to be treated as high-risk so the application of the filter does not apply.
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**Question 32. If you see the need for clarification of the high-risk classification in Point 8 of Annex III to the AI Act and its interplay with other Union or national legislation, in particular Regulation (EU) 2024/900 on targeted political advertising, please specify the practical provision in other Union or national law and where you see need for clarification of the interplay**

The reading of the provision of point 8 together with Recital 61 would suggest that the spirit of this provision is to avoid automated decision-making in the justice system. Following this line of reasoning, the CCBE recommends that there be a further clarification of the interplay between the AI Act and the GDPR (Article 22) and the related case-law (see: C-634/21 SCHUFA), also taking into account transparency and meaningful explanation. The CCBE would like to point out that the assessment of the AI system must also focus on the context and the ultimate objective of its use. It is important that humans will still have sufficient time and information resources to come to an own assessment. Also, the entity that is using the AI should foresee ways to check whether or not human oversight is applied. In the CCBE's view, human oversight must be substantive and involve critical judgment rather than be a mere formality or rubber-stamping a decision generated in an automated way. However, to determine the level of human intervention and the role of an AI system making a decision, a broader context must be examined, as stressed earlier. Finally, the CCBE would like to point out that profiling could be considered in the described use cases of AI, insofar as the subject of the evaluation/expert report/complaint/recommendation etc. is an individual and as such must be taken into account.

**Questions in relation to the need for possible amendments of high-risk use cases in Annex III and of prohibited practices in Article 5. (Section 5)**

**Question 53. Do you have or know concrete examples of AI practices that in your opinion contradict Union values of respect for human dignity, freedom, equality and no discrimination, democracy and the rule of law and fundamental rights enshrined in the Charter and for which there is a regulatory gap because they are not addressed by other Union legislation?**

**If so, please specify the concrete AI system that fulfils those criteria and justify why you consider that this system should be prohibited and why other Union legislation does not address this problem.**

While the CCBE recognises the significance of this question, it believes that such a fundamental issue deserves comprehensive consideration beyond the scope of this consultation, which is specifically targeted at high / low risk classification. The CCBE thinks that the revision of the list of unacceptable practices and the risks associated therewith should be the subject of a separate and more in-depth consultation exercise. The CCBE would also like to point out that the present consultation, namely its timing and length, is insufficient to provide a more nuanced and thus more informed view of the risks arising in the areas set out in Annex III (which would also reflect the specific needs and procedural structures of the various Member States). The CCBE would welcome more opportunities for constructive engagement on the anticipated guidelines.