



AUTORITEIT
PERSOONSGEGEVENS

Call for input

AI systems for social scoring

Prohibition in EU Regulation 2024/1689 (AI Act)

Autoriteit Persoonsgegevens (NL) – Department for the Coordination of Algorithmic Oversight (DCA)

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Summary

The European AI Act (2024/1689) has been in force since 1 August 2024 and regulates the use of Artificial Intelligence (AI) in the European Union (EU). The AI act has a risk-based approach. As a result, certain AI systems posing an unacceptable risk are prohibited from 2 February 2025.

It is up to the supervisors of the AI Act to explain how the prohibitions will be interpreted for the purpose of supervision. In order to prepare for this in The Netherlands, the Autoriteit Persoonsgegevens (AP) asks interested parties (citizens, governments, businesses and other organisations) and their representatives for their needs, information and insights. We can use all input to consider the necessary further clarification of the prohibited AI systems.

On 27 September 2024, the AP published the [first call for input](#) on the first two prohibitions of the AI Act and on 31 October the [second call for input](#) on emotion recognition in the areas of workplace or education institutions. In this third call for input, we address the third prohibition: AI systems for *social scoring* (prohibition C). This document outlines specific criteria for these prohibited AI systems while requesting (additional) input through a set of questions. Contributions can be submitted until 7 February 2025.

The AP makes this call for input based on its role as a [coordinating supervisor of algorithms and AI](#). For the purpose of this new task, the Department for the Coordination of Algorithmic Oversight (DCA) was established within the AP. This call for input also aligns with the preparatory work being done in support of future supervision of AI systems that are prohibited under the AI Act. The Dutch government is currently working on the formal designation of national supervisory authorities for the AI Act.



I. Background

1. **The European AI Act (2024/1689) has been in force since 1 August 2024.** This Regulation sets out rules for the provision and the use of artificial intelligence (AI) in the EU. The premise of the AI Act is that while there are numerous beneficial applications of AI, the technology also entails risks that have to be managed. The legislation follows a risk-based approach. More restrictive rules will apply to those AI systems that pose a greater risk. Some systems entail such an unacceptable risk that their placing on the market or use is completely prohibited. This is, for example, the case with AI systems that are used for social scoring. The prohibitions are set out in Article 5 of the AI Act.
2. **This call for input provides a preliminary basis for further clarification of the prohibitions in the AI Act.** To get there, this call for input aims to gather generic information and insights on, among other things, the functioning of AI technologies and the application possibilities that are relevant to the clarification of the prohibitions.

Prohibited AI applications as from February 2025

3. **The prohibitions in the AI Act will become applicable soon.** As from 2 February 2025, the prohibited AI systems listed in Article 5 may no longer be put on the European market or used. As from 2 August 2025, market surveillance authorities should be designated for prohibited AI systems and sanctions may be imposed for violations of the prohibitions. Before this time, violation of one of the prohibitions could already lead to civil liability.

Supervision in the Netherlands on compliance with the prohibitions

4. **The Dutch government is currently working on legislation designating which supervisory authority will be responsible for overseeing compliance with the prohibitions.** The AP (from the Department for the Coordination of Algorithmic Oversight) and the Dutch Authority for Digital Infrastructure (RDI) have issued an advice on this matter in collaboration and coordination with other supervisory authorities. It has been recommended, among other things, that the AP could be designated as the market surveillance authority for most of the prohibitions in Article 5. Following these recommendations, the AP will closely cooperate with other relevant supervisors for the supervision of prohibited AI systems.
5. **Because the prohibitions in this call concern AI systems that also fall under other Union laws, this call has been coordinated within the AI and Algorithm group of the Dutch Cooperation Platform of Digital Supervisory authorities.** This is in the spirit of the requirement in Article 70(8) of the AI Act to consult relevant national competent authorities responsible for other Union law that covers AI systems.



II. About this call for input

Purpose: Why do we ask for input

6. **It is up to the supervisors of the AI Act to explain how the prohibitions will be interpreted for the purpose of supervision.** In preparation for this, the AP is asking for information and insights from stakeholders (citizens, governments, companies and other organisations) and their representatives. All responses can be used for further explanation of the prohibited AI. Within the AP, the Department for the Coordination of Algorithmic Oversight is charged with this task.
7. **This call for input discusses the prohibition outlined in Article 5, paragraph 1, subparagraph c of the AI Act. In addition to this call for input, the AP already published a [first call](#) on 27 September 2024 on two other prohibitions, namely the prohibition on manipulative and deceptive AI systems and the prohibition on exploitative AI systems. The [second call for input](#) on emotion recognition in the areas of workplace or education institutions was published on October 31 2024**
8. **The legislative text and the recitals serve as the foundations for this call for input.** Given the scope and possible impact of this prohibition, a call for input is issued for this prohibition. Please refer to the annex to this document for an overview of all prohibitions in subparagraphs (a) to (g) of Article 5, paragraph 1 of the AI Act.
9. **This call for input highlights specific aspects of this prohibition.** The focus is on those specific criteria that determine whether or not an AI system is within the scope of this prohibition. Each criterion is briefly explained based on the legislator's recitals of the AI Act. In some cases, we provide an interpretation of our own. If we do so, this is explicitly mentioned. We then pose several questions, the answers to which will contribute to a better understanding of the prohibition.

Process: This is how you send your input to us.

10. **You decide which questions you answer.** You can also provide us with other relevant input in addition to the questions asked. Please send your input to dca@autoriteitpersoonsgegevens.nl by 7 February 2025. Please mention the subject "call for input DCA-2024-03 ('AI systems for *social scoring*') and your name and/or your organisation in your email. If desired, you can provide us with your contact details so that we can reach you in case we have further questions. When we have received your input, we will send you a confirmation by e-mail.

Follow-up: What do we do with your input?

11. **After the closure of this call for input, the AP will publish a summary and appreciation of the input on AI systems for emotion recognition in the areas of workplace or education institutions.** In this summary, we will refer in generic terms to the input received (e.g., "several sectoral representative organisations have indicated that", "a developer of AI systems points out that", "organisations advocating for fundamental rights note that"). If preferred and indicated by you, we may explicitly name your organisation or group. Through our summarised and evaluative response, we can also share the acquired insights with other (European) AI supervisory authorities. For instance, the summary and appreciation of the contribution may be utilised in the drafting of guidelines on the prohibitions.



12. **We will only use your input for our task to obtain information and insights about the prohibitions in the AI Act.** We will delete your personal data after publication of our summary and evaluation of the input, unless you have given permission for further use. For more information about how we process personal data, please see: [The AP and privacy](#).

More calls for input

13. **Following this call, there may be more calls for input on other parts of the AI Act, including the prohibitions.** The AP has previously called for input on manipulative, misleading and exploitative AI systems as well as on AI systems that are used for emotion recognition in the areas of workplace or education institutions.



III. Definition of the prohibition on AI systems for social scoring

General scope of prohibited AI systems

14. **The AI Act (and its prohibitions) apply to ‘AI systems’.** Thus, in order to determine whether the Regulation applies, an important question is whether the product falls within the definition of an AI system:

‘A machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers from the input it receives how to generate outputs such as predictions, content, recommendations or decisions that can influence physical or virtual environments.’

15. **The prohibitions are addressed to providers (e.g. developers), deployers, importers, distributors and other operators.** These operators shall not place on the market, put into service or use the prohibited AI systems. Therefore, it is important for the above operators to ensure that they do not place on the market or use a prohibited AI system. To do so, they will have to verify whether the AI system in question falls under the prohibitions in Article 5.

Content of the prohibition

16. **This call for input focuses on the prohibition of AI systems used for social scoring.** The AI Act prohibits AI systems used for social scoring by evaluating or classifying natural persons or groups of persons based on their social behaviour or personal characteristics (hereinafter: *systems for social scoring*). In the remainder of this call for input, we will refer to this prohibition as ‘prohibition C’. The Regulation defines this prohibition as follows:

Article 5(1)(c) (‘Prohibition C’):

‘the placing on the market, putting into service or the use of AI systems for the evaluation or classification of natural persons or groups of persons over a certain period of time based on their social behaviour or known, inferred or predicted personal or personality characteristics, with the social score leading to either or both of the following:

- i) detrimental or unfavourable treatment of certain natural persons or groups of persons in a social contexts that are unrelated to the contexts in which the data was originally generated or collected;
- ii) detrimental or unfavourable treatment of certain natural persons or groups of persons that is unjustified or disproportionate to their social behaviour or its gravity;’

17. **Finally, the AI Act is without prejudice to the GDPR.** Obligations of providers and deployers of AI systems in their role as controllers or processors stemming from Union or national law on the protection of personal data continue to apply in respect of the design, development or use of AI systems.



IV. Criteria and questions regarding the prohibition

18. **In order to structure this call for input, separate criteria of the prohibitions have been set out in more detail in the next section.** These criteria are highlighted because they are important conditions for determining whether or not AI systems are covered by prohibition C. A brief explanation is provided for each criterion, based on the explanation provided by the legislator in the explanatory recitals to the AI Act. In some cases, explanations are based on the AP's own interpretation; this is clearly indicated. This is followed by some accompanying questions that you can use when giving your input.

Criterion 1: Social scoring: evaluation or classification of natural persons or groups of persons over a certain period of time based on their social behaviour or known, inferred or predicted personal or personality characteristics

19. **This prohibition covers certain AI systems intended for the evaluation or classification of natural persons or groups of persons, that is social scoring.** This evaluation or classification – and thus the social scoring – may lead to the detrimental or unfavourable treatment of certain natural persons or groups of persons. The recital describes that social scoring may lead to discriminatory outcomes and the exclusion of certain groups, violating the right to dignity and non-discrimination and values such as equality and justice. The recitals also highlight that these AI systems for social scoring can be provided or deployed by both private and public actors.
20. **The evaluation or classification should furthermore take place over a certain period of time and be based on social behaviour, or known, inferred or predicted personal or personality characteristics.** Although the recitals do not provide any further explanation on the evaluation or classification based on known, inferred or predicted personal or personality characteristics, it is explained that, where this evaluation is based on social behaviour, it can be carried out in multiple contexts.



Questions related to criterion 1

1. Can you describe (imaginary) AI systems used to evaluate or classify natural persons or groups of persons over a certain period of time and where this is made possible based on *social behaviour*?
2. Can you describe (imaginary) AI systems used to evaluate or classify natural persons or groups of persons over a certain period of time and where this is made possible based on *known, inferred or predicted personal or personality characteristics*?
3. Is it clear to you what the distinction is between known, inferred and predicted personality characteristics? If not, could you explain this further?
4. What questions or need for clarification in the context of this prohibition do you still have when distinguishing between evaluation *or* classification? What questions or need for clarification do you have in the context of this prohibition when distinguishing between this evaluation or classification based on social behaviour on the one hand *or* known, derived and predicted personality characteristics on the other hand?
5. A social score is the result of an evaluation or classification. Can you give an (imaginary) example of a description of a social score?

Criterion 2: Detrimental or unfavourable treatment

21. **The evaluation or classification by an AI system as described above – i.e. the ‘social scoring’ and the resulting social score – may result in detrimental or unfavourable treatment of certain natural persons or groups of persons.** The following paragraphs describe two types of detrimental or unfavourable treatments, resulting from the social score, each of which, individually or in combination, entails that the AI practice is prohibited.
According to the AP, AI systems that favour people could, in certain cases, also be covered by the prohibition if they indirectly result in detrimental or unfavourable treatment of other people.
22. **Firstly, certain AI systems for social scoring are prohibited if the social score generated by the AI system results in the detrimental or unfavourable treatment of individuals in social contexts that are unrelated to the contexts in which the data were originally generated or collected.** What constitutes detrimental or unfavourable treatment in the above situation is not explained in the recitals. It is however important that the social context in which this treatment takes place should *not* be *related* to the context in which the data were originally generated or collected. As mentioned in paragraph 20 above, social scoring can take place in different contexts over a given period of time. According to the AP, it could therefore be concluded that it is in any event necessary that *one* of those contexts bears no relation to the context in which the detrimental treatment takes place. Furthermore, according to the AP it seems that the context in which the data were originally generated or collected does not necessarily have to be a *social* context.
23. **Secondly, certain AI systems for social scoring are prohibited if the social score provided by the AI system results in the detrimental or unfavourable treatment of persons that is unjustified or disproportionate in relation to the gravity of the social behaviour.** What constitutes detrimental or unfavourable treatment in the above situation is not explained in the recitals. The detrimental or unfavourable treatment should at least be: *either* unjustified, *or* disproportionate in relation to the gravity of the social behaviour.



Questions related to criterion 2

6. Can you give (imaginary) examples of a detrimental or unfavourable treatment of persons that is related to a social score of an AI system?
7. Are there situations in which the advantage of one person or group of persons also leads to a implicit disadvantage of other persons? Can you give an (imaginary) example of this?
8. Can you describe or give an example of an AI system where the detrimental or unfavourable treatment in a social context is or is not related to the contexts in which the data were originally collected or generated?
9. Is it clear to you when there is an adverse or unfavourable treatment in a social context that is unrelated to the contexts in which the data were originally generated or collected? If not, what do you need more clarity about? Can you explain this further?
10. Could you describe or give an example of AI systems where the detrimental or unfavourable treatment is unjustified or disproportionate to the gravity of the social behaviour?
11. Is it sufficiently clear to you when there is a detrimental or unfavourable treatment that is unjustified or disproportionate to the social behaviour or its gravity? If not, what do you need more clarity about? Can you explain this in more detail?

Scope of the prohibition

24. **The recitals of the Regulation also set out situations in which an AI system should not be covered by the prohibitions.** The recitals describe that the prohibition should not affect lawful evaluation practices of natural persons that are carried out for a specific purpose in accordance with Union and national law.



Questions related to the scope of the prohibition

12. Could you provide an (imaginary) description of an AI social scoring system deployed in accordance with Union or national law?
13. What further questions or clarifications do you have about the scope of this prohibition?

25. **In conclusion, it is stressed that this document does not cover all aspects of the prohibition.** Therefore, interested parties are expressly invited to provide relevant input, also outside the questions asked, for the further clarification of prohibition C.



Concluding questions

14. Apart from the questions posed, is there any relevant input that you would like to provide for the further clarification of Prohibition C?
15. Do you think it is desirable that we explicitly mention your organisation or group in our public response to and appreciation of this call for input, e.g. so that we can discuss examples and considerations that you provide?



Annex: overview of prohibitions from Article 5, paragraph 1 of the AI Act 2024/1689

Prohibition A: Certain manipulative AI systems

AI systems that deploy subliminal techniques beyond a person's consciousness or purposefully manipulative or deceptive techniques, with the objective, or the effect of materially distorting the behaviour of a person or a group of persons by appreciably impairing their ability to make an informed decision, thereby causing them to take a decision that they would not have otherwise taken in a manner that causes or is reasonably likely to cause that person, another person or group of persons significant harm.

Prohibition B: Certain exploitative AI systems

AI systems that exploit any of the vulnerabilities of a natural person or a specific group of persons due to their age, disability or a specific social or economic situation, with the objective, or the effect, of materially distorting the behaviour of that person or a person belonging to that group in a manner that causes or is reasonably likely to cause that person or another person significant harm.

Prohibition C: Certain AI systems for social scoring

AI systems for the evaluation or classification of natural persons or groups of persons over a certain period of time based on their social behaviour or known, inferred or predicted personal or personality characteristics, with the social score leading to either or both of the following:

- detrimental or unfavourable treatment of certain natural persons or groups of persons in social contexts that are unrelated to the contexts in which the data was originally generated or collected;
- detrimental or unfavourable treatment of certain natural persons or groups of persons that is unjustified or disproportionate to their social behaviour or its gravity.

Prohibition D: Certain AI systems for predictive policing

AI systems for making risk assessments of natural persons in order to assess or predict the risk of a natural person committing a criminal offence, based solely on the profiling of a natural person or on assessing their personality traits and characteristics; this prohibition shall not apply to AI systems used to support the human assessment of the involvement of a person in a criminal activity, which is already based on objective and verifiable facts directly linked to a criminal activity.

Prohibition E: Untargeted scraping of facial images

AI systems that create or expand facial recognition databases through the untargeted scraping of facial images from the internet or CCTV footage.

Prohibition F: Certain AI systems for emotion recognition in the workplace or in education

AI systems that infer emotions of a natural person in the areas of workplace and education institutions, except where the use of the AI system is intended to be put in place or into the market for medical or safety reasons.



Prohibition G: Certain AI systems for biometric categorisation of persons

AI systems for biometric categorisation that categorise individually natural persons based on their biometric data to deduce or infer their race, political opinions, trade union membership, religious or philosophical beliefs, sex life or sexual orientation; this prohibition does not cover any labelling or filtering of lawfully acquired biometric datasets, such as images, based on biometric data or categorising of biometric data in the area of law enforcement.

Prohibition H: Certain AI systems for real-time remote biometric identification in publicly accessible spaces for purpose of law enforcement

AI-systems used for of 'real-time' remote biometric identification systems in publicly accessible spaces for the purpose of law enforcement, unless and in so far as such use is strictly necessary for one of the following objectives:

- the targeted search for specific victims of abduction, trafficking in human beings or sexual exploitation of human beings, as well as the search for missing persons;
- the prevention of a specific, substantial and imminent threat to the life or physical safety of natural persons or a genuine and present or genuine and foreseeable threat of a terrorist attack;
- the localisation or identification of a person suspected of having committed a criminal offence, for the purpose of conducting a criminal investigation or prosecution or executing a criminal penalty for offences referred to in Annex II and punishable in the Member State concerned by a custodial sentence or a detention order for a maximum period of at least four years.

Point (h) of the first subparagraph is without prejudice to Article 9 of Regulation (EU) 2016/679 for the processing of biometric data for purposes other than law enforcement.