The European Union Artificial Intelligence Act

Artificial Intelligence Washing

Compliance and Awareness

July 2024

Amsterdam - London - Singapore

For more information on this publication, visit https://www.ai-and-partners.com/.

About AI & Partners

'AI That You Can Trust' - Your trusted advisor for EU AI Act Compliance. Unlock the full potential of artificial intelligence while ensuring compliance with the EU AI Act by partnering with AI & Partners, a leading professional services firm. We specialise in providing comprehensive and tailored software solutions for companies subject to the EU AI Act, guiding them through the intricacies of regulatory requirements and enabling responsible and accountable AI practices. At AI & Partners, we understand the challenges and opportunities that the EU AI Act presents for organisations leveraging AI technologies. Our team of seasoned experts combines in-depth knowledge of AI systems, regulatory frameworks, and industry specific requirements to deliver strategic guidance and practical solutions that align with your business objectives.

To find out how we can help you, email contact@ai-and-partners.com or visit https://www.ai-and-partners.com.

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An AI-Powered Era

The EU AI Act is a significant regulatory milestone aimed at creating a cohesive framework to protect fundamental rights and harmonize AI regulations across the EU. It empowers individuals and supports a thriving digital market by ensuring the development and deployment of trustworthy AI systems.

What is the EU AI Act?

Risk-based approach to regulating use, development, deployment and/or marketing of AI systems in the EU based on risks to individuals' safety, security and fundamental rights.

What does this report focus on?

Analyses the emerging phenomenon of AI Washing and the risks it poses to the finance industry following the EU AI Act's entry into force.

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EU AI Act – A Cornerstone for Trustworthy AI

The EU AI Act is a significant regulatory milestone aimed at creating a cohesive framework to protect fundamental rights and harmonize AI regulations across the EU. It empowers individuals and supports a thriving digital market by ensuring the development and deployment of trustworthy AI systems.

Addressing AI Washing and its Risks

AI Washing, which falsely portrays AI products as trustworthy, poses significant risks to consumers and stakeholders. It is crucial for firms to adopt strategies to mitigate AI Washing, including fundamental rights impact assessments and AI system breach notifications, to maintain market confidence and avoid potential litigation risks.

Best Practices and Regulatory Compliance for Firms

Firms must ensure their AI claims are accurate, substantiated, and transparent. This involves updating governance arrangements, engaging in proactive data management, and considering external verification. Compliance with the EU AI Act is essential to prevent AI Washing and foster a trustworthy AI economy, requiring clear communication and alignment with regulatory standards.

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Purpose and Principles of EU AI Act

The EU AI Act, proposed in April 2021 by the European Commission, aims to establish harmonized rules across the EU to ensure trustworthy AI. Key principles include enhanced product regulation, a focus on high-risk AI systems, a risk-based lifecycle approach, fostering trust across the value chain, and promoting responsible, human-centric AI innovation.
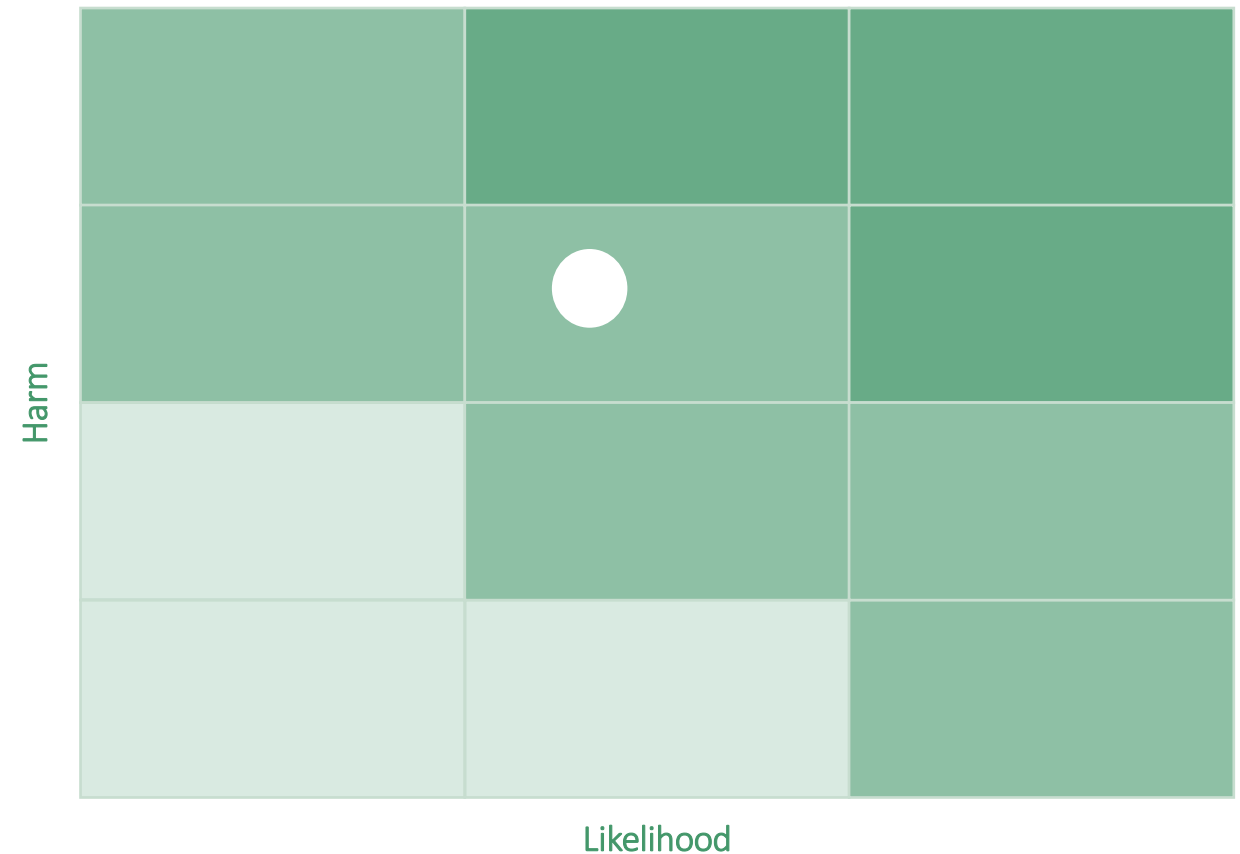
Addressing AI Washing and its Risks

The rapid market release of AI products has led to widespread, unsubstantiated claims of trustworthiness, necessitating the EU AI Act's focus on product safety. The Act outlines criteria to address AI Washing, including a common understanding of its key features, identifying occurrences and complaints, and assessing the risks it poses to financial entities, investors, and consumers.

Insights and Recommendations

The AI & Partners' Report delves into AI Washing, its anticipated occurrences, and market impacts. It highlights the EU AI Act's role in addressing these challenges, identifies implementation obstacles, and proposes recommendations for enhancing the Act's effectiveness.

Application to existing risk analysis tools

Harm / Likelihood

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Trustworthy

Unexplainable

Drivers and Definition of AI Washing

AI Washing arises from increased demand for trustworthy AI products, competitive pressures, regulatory ambiguities, and data issues. It involves misleading claims about the trustworthiness of AI products, which can deceive consumers, investors, and market participants through both omission and false information.

Characteristics and Occurrences of AI Washing

AI Washing can occur at various levels (entity, product, service) and stages of the AI business cycle. It may be intentional or unintentional and can be triggered by multiple parties, including the entity itself, advisors, or third-party verifiers. Misleading claims can undermine trust in AI markets and policies, even without immediate harm.

Mitigation Obligations for Providers and Deployers

The EU AI Act mandates transparency and accountability to mitigate AI Washing. Providers must clearly mark AI-generated content and inform users of AI interactions. Deployers need to disclose the use of AI in emotion recognition, biometric categorization, and deep fakes to maintain transparency and trustworthiness in AI applications.

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Increasing prevalence driven by mass GenAI adoption
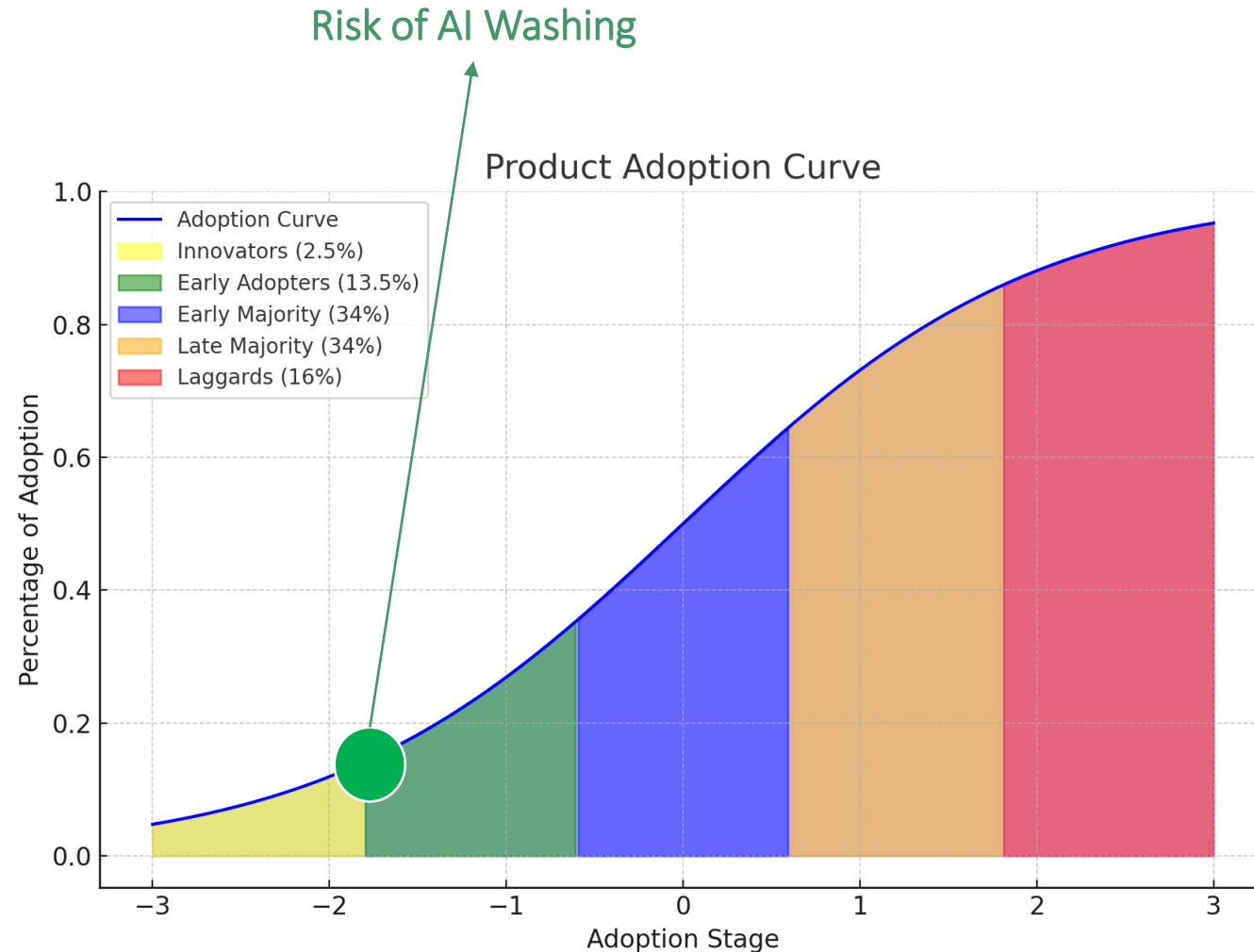
Increasing Trends in AI Washing

AI Washing incidents, where misleading claims about trustworthy AI are made, are expected to grow globally, particularly in North America and the EU financial sector. These incidents often involve overstated trustworthy imp and deceptive marketing practices. The increase in such cases underscores the need for vigilance and robust regulatory frameworks.
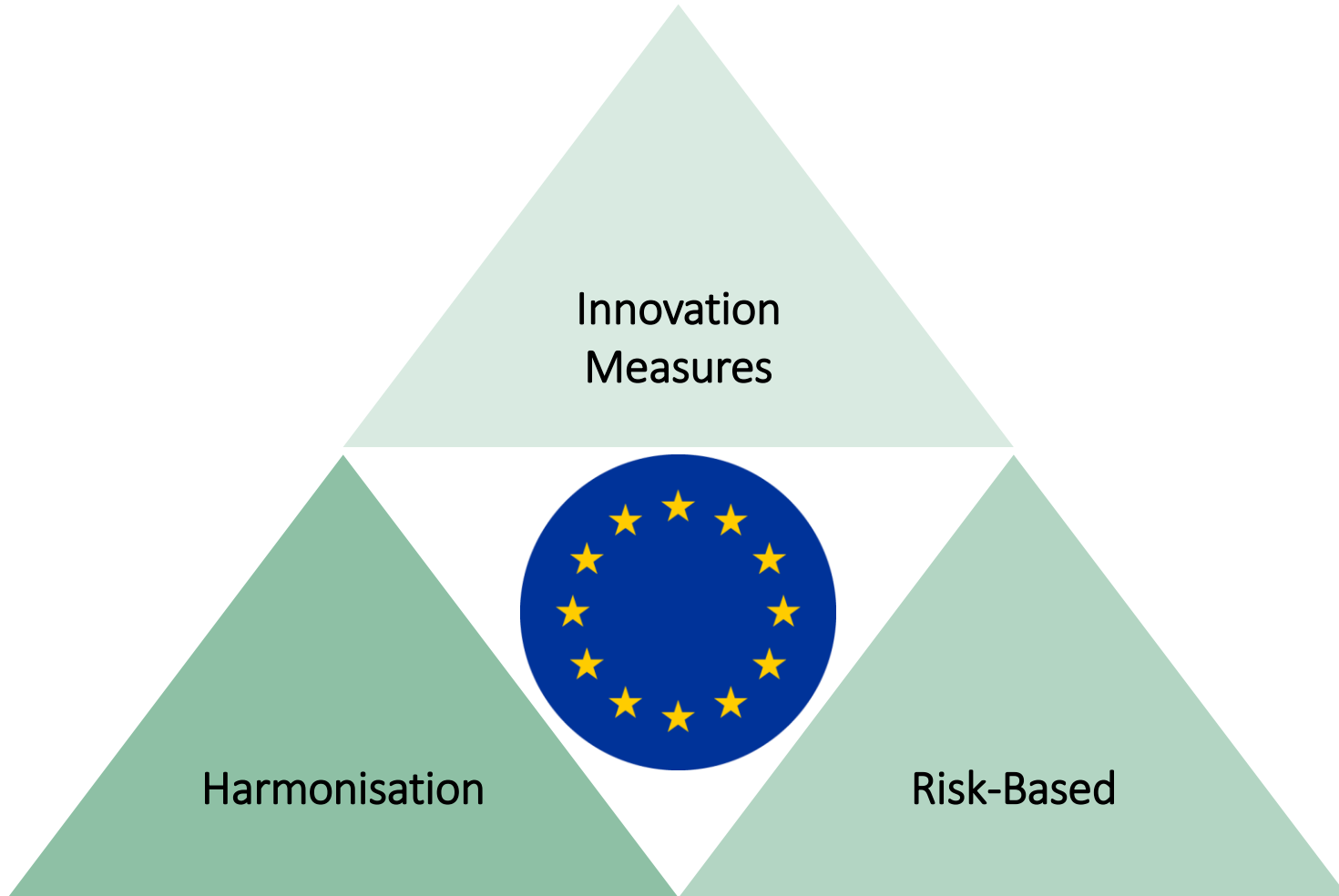
Common Occurrences and Characteristics

Misleading information is often found in product information, marketing materials, and mandatory disclosures. Common misleading characteristics include vagueness, empty claims, inconsistency, lack of proof, selective disclosure, and outdated information.

Risks and Materiality of AI Washing

AI Washing poses significant risks, including reputational, operational, and litigation risks, which can impact financi stability and consumer trust. As the market for trustworth AI products grows, the potential for these risks to becom material increases.

Risk of AI Washing

Product Adoption Curve

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Using an AI regulatory framework as a deterrent mechanism

Harmonised Legal Framework

The Act establishes a uniform legal framework, fostering the uptake of trustworthy AI while ensuring protection of health, safety, and fundamental rights, thus preventing market fragmentation.

Risk-Based Approach

With a focus on high-risk AI systems, the Act ensures consistent protection of public interests, aligning with international commitments and ethical principles.

Support for Innovation

Measures such as AI regulatory sandboxes support innovation, particularly benefiting SMEs and startups, while voluntary codes of conduct encourage broader adoption of ethical AI practices.

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Leverage risk-management protocols

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High-Level Principles and Processes	Entity-Level Practices to Mitigate AI Washing Risk	Product/Service-Level Practices to Mitigate AI Washing Risk
General Principles	Forward-Looking Commitments	Product Governance
Governance and Internal Processes	Trustworthy AI Targets	Market Guidance
Trustworthiness Data	Lobbying	
External Verification	Risk Management	

General Principles and Processes

Firms should ensure their trustworthy AI claims are accurate, substantiated, up-to-date, and understandable. This involves accurately representing the entity or product, substantiating claims with evidence, keeping claims updated, and ensuring clarity in communication.

Governance and Internal Processes

Adapting governance arrangements and internal processes can enhance scrutiny and rigor in trustworthy AI-related communications. Processes such as product approval, marketing material review, and internal controls play a crucial role in mitigating AI washing risks.

Trustworthiness Data and External Verification

Firms should proactively address data challenges and consider external reviews for credibility. Transparency about trustworthy AI data sources and methodologies, along with external verification, enhances the integrity of trustworthy AI claims.

A nascent phenomenon with increasing prevalence

Understanding AI Washing

A Proposed High-Level Understanding of AI Washing

Lack of understanding remains pervasive amongst market participants

"AI washing is going to be one of the most important issues in the AI sector, given its wide use as a buzz word for investment and the general lack of understanding regarding what it truly is."

James Burnie, *Partner*, gunnercooke

gunnercooke

AI Washing undermines true potential of artificial intelligence

"AI washing is a deceptive practice that undermines the true potential of artificial intelligence. AI washing poses significant risks to consumer trust and the integrity of the AI industry. By recognizing and addressing AI washing, stakeholders can foster a more honest and innovative AI landscape, ensuring that the transformative power of AI is realized and appreciated for what it truly is."

Anandaday Misshra, *Founder and Managing Partner*, AMLEGALS

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Understanding AI Washing

Firms' approach to AI Washing

Systematic, rigorous and empirical scientific research to boost firms' mitigation efforts

"The lack of diverse, systematic and properly funded independent academic research into the reliability and trustworthiness of generative AI tools means that much of the reported evidence in favour of them is selectively anecdotal and often driven by corporate interests. These tools have significant impacts on human experience and even health. If these were medications they would never make it into the marketplace so easily."

Paul Levy, *Founder and Director*, FringeReview

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AI Washing trends, types and risks
Likely AI Washing occurrences

AI Hype fuels widespread AI Washing

"AI hype creates fertile ground for AI washing. Organizations must ensure fair communication about their AI products, considering both positive and negative impacts."

Michele Soavi, *COO / Chief Sustainability Officer*, ImpactScope

AI Washing trends, types and risks
AI Washing risks

AI Products with 'genuine value' avoid pitfalls of AI Washing

"AI washing in cybersecurity is particularly concerning because it creates a false sense of security. They might be more vulnerable than ever."

Michael Boevink, *Founder*, Boevink Group

AI Washing trends, types and risks
AI Washing risks

AI Products with 'genuine value' avoid pitfalls of AI Washing

"Much like greenwashing, where companies overstated their sustainability credentials during peak consumer interest in eco-friendly practices, AI washing poses a similar reputational risk amid the current AI hype. Companies must ensure that AI functionalities are not merely cosmetic additions but are central to the core purpose and genuine value of their products and services to avoid the risk of AI washing."

Rita Sheth, *Partner*, gunnercooke

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Addressing AI Washing through EU AI Act

Key building block in the AI regulatory framework to address AI Washing	Challenges and areas for potential complements

Public trust – A value driver for AI Economy

"Given the prevalence and growth of AI products for consumers over the past few years, it is essential that the public are able to trust the technology behind them. Using the EU AI Act as a framework to encourage cooperation between stakeholders to share best practice, address challenges and advocate for responsible AI development is a positive step forward that will reduce the likelihood of AI washing and build greater trust."

Simon Newman, *Co-Founder*, Cyber London
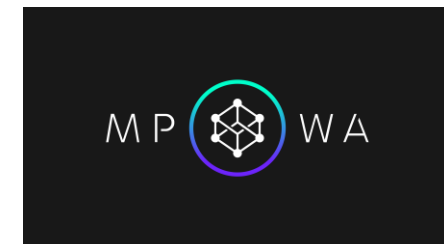

AI Washing undermines authentic AI projects

"AI washing at IIT Dhanbad undermines authentic AI projects by generating unwarranted hype around superficial applications. This practice diverts resources from meaningful research and adversely impacts our credibility in both academic and industrial communities."

Abhishek Gautam, *AI Researcher*, IIT Dhanbad

Hypercompetitive approach to AI innovation drives downside risk

"As the case of Timnit Gebru shows, there are some fundamental issues in play within the BigTech dominated AI arms race. The current hyper competitive approach to AI innovation creates significant downside risk to public safety and wider economic social benefits of the technology. A more balanced, collaborative and "open source" approach would be highly advisable in a space that is known for market abuse and lawfare to protect their own commercial interests."

Ryan Lavelle, *Founder*, Mpowa

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Addressing AI Washing through EU AI Act

Challenges and areas for potential complements

Finance sector vigilant of need to guard against AI Washing

"Finance is, perhaps, the sector that's most aware of the need to guard against AI Washing due to its role in supporting the global economy. From the fundamental risk of 'herding' to existing regulatory consensus in regulatory regimes across multiple jurisdictions, such as Basel II, Solvency IV, MiFID II, MiCAR and the upcoming DORA, it is set to be insulated from a malignant practice. The key question for the finance sector is: What is AI?, as WEF asked back in 2018. A question which largely remains unanswered."

Matthew Gardiner, *Founder*, A1Ai

Practices to mitigate AI Washing risks by firms

Practices to mitigate AI Washing risk at entity level

Utilisation of regulatory mechanisms for optimal outcomes

"Mitigating the risks of AI washing can be effectively achieved through a combination of measures and regulatory strategies. This may involve mandatory legislation, alongside voluntary compliance with AI metrics and adherence to ethical standards by market participants. Furthermore, the establishment of innovative regulatory hubs can provide necessary guidance, while regulatory (digital) sandboxes offer a safe environment for testing products and solutions, encouraging both compliance and innovation."

Kate Shcheglova-Goldfinch, *AI-governance and regulatory expert*

AI Washing Masks True AI Capabilities

"AI Washing conceals that AI cannot replace human control and responsibility, as stipulated by Article 14 of the EU AI Act and the US AI Bill of Rights. While AI can enhance human capabilities, essential human oversight in risk management is crucial to ensure control and safety."

Doug Hohulin, *Business Associate*, AI & Partners

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Practices to mitigate AI Washing risks by firms

Practices to mitigate AI Washing risk at product and/or service level

Empowerment relies on a safe, collaborative environment

"At QX Lab AI we empower safe, executable AI in a multilingual sphere, learning, sharing, and collaborating to achieve remarkable outcomes while upholding responsible and ethical standards."

Arjun Prasad, *Co-Founder and Chief Strategy Officer*, QX Lab AI

AI – 'A general purpose tool to level the playing field'

"If correctly framed and enabled, AI can help reduce the socio-economic disparities and overcome the digital divides that hinder the full transformative impact of digital transformation."

Jonathan Gonzalez, *Senior Manager – Digital Transformation*, Access Partnership

UN Declaration on AI Washing needed

"The UN has called "greenwashing" (marketing "spin" that deceptively seeks to persuade consumers that an organization's products, goals, or policies are environmentally friendly) "a significant obstacle to tackling climate change." A similar UN declaration is warranted for AI Washing – before irreparable damage is done to the pace of AI development."

Jerome Silber, *Legal Executive*, ScreenGeni,us

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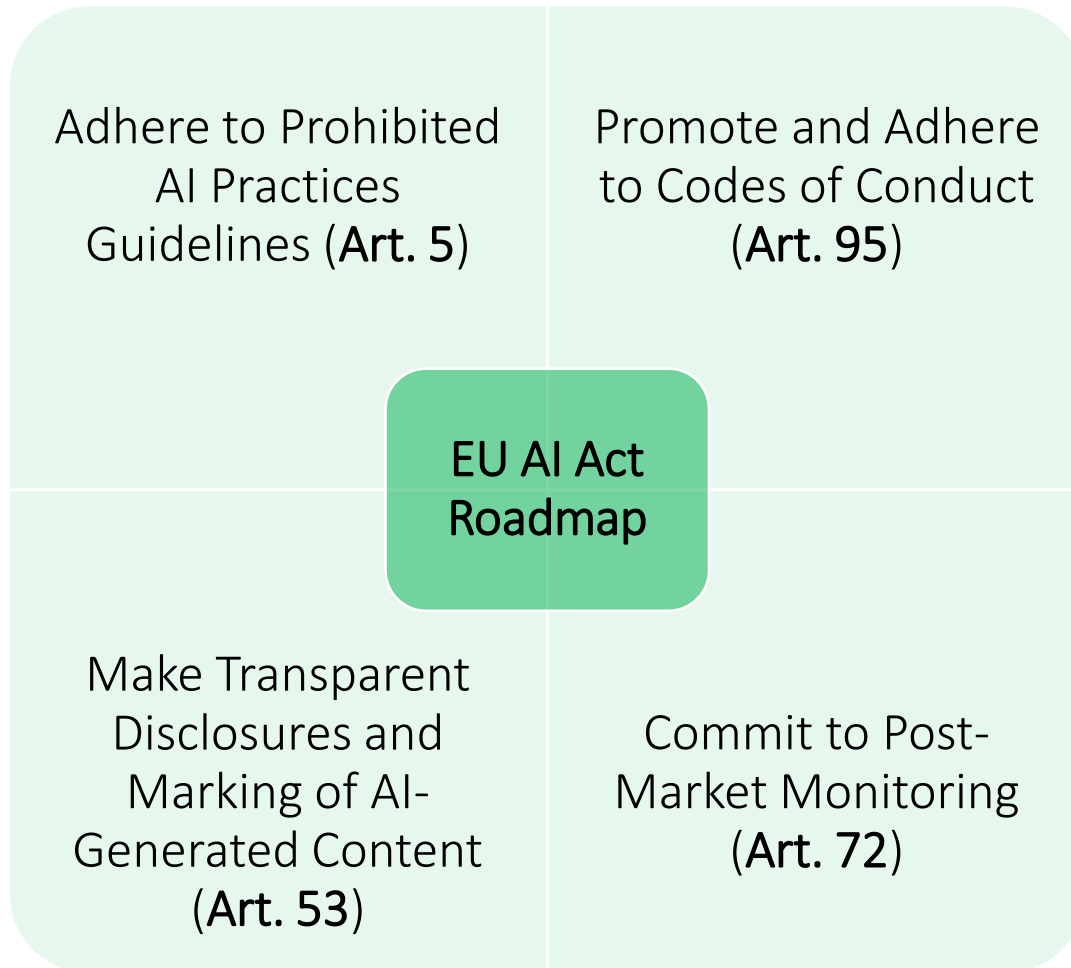**AI & Partners**

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Practices to mitigate AI Washing risks by firms

Key high-level principles and practices

Quality of healthcare provision undermined

"By overstating the capabilities of AI in healthcare, AI Washing deceives healthcare professionals by misleading them about the reliability of AI-driven diagnostics and treatments - potentially leading to critical errors in patient care and diagnosis accuracy that risks patient health and lives."

Dr. **Harvey Castro**, *Chief Medical AI Officer*, Helpp.ai

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EU AI Act Roadmap

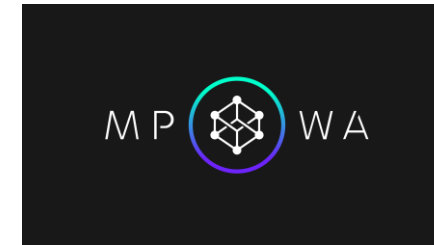| Adhere to Prohibited AI Practices Guidelines (Art. 5)	Promote and Adhere to Codes of Conduct (Art. 95)
EU AI Act Roadmap	
Make Transparent Disclosures and Marking of AI-Generated Content (Art. 53)	Commit to Post-Market Monitoring (Art. 72)

Adopting industry Best Practice

- **Remain aware**: Stay updated with regulatory updates and guidance related to the EU AI Act to ensure ongoing compliance and adaptation.

- **Stakeholder cooperation**: engage in industry forums and initiatives to share best practices, address challenges, and advocate for responsible AI development.

- **Regulatory liaison**: Cultivate positive relationships with regulators through open communication and proactive engagement.

- **Harbour Responsible AI Practices**: Always assess and improve AI deployment strategies to align with evolving ethical and regulatory standards.

- **Seize the initiative, stay ahead**: Embrace the EU AI Act as an opportunity to drive positive change and lead the industry towards responsible AI adoption.

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- **Doug Hohulin**, Business Associate (AI & Partners), Strategy and Technology Advisor on Responsible AI (Ethics, Governance, Policy, Regulation, Compliance, Safety), AI in Healthcare, and AI Operations and Workflows.

- **Dr. Harvey Castro**, Dr. Harvey Castro is an ER physician, AI futurist, and author specializing in AI's impact on healthcare. With over 20 years of medical experience and a strong background in AI, he bridges the gap between technology and patient care to enhance healthcare outcomes and safety.

- **Jerome Silber**, Senior Fellow, a seasoned attorney with extensive experience as an external lawyer and in-house counsel. He specializes in negotiating commercial and technology agreements. Jerry has also taught communications law and ethics at various local colleges. He has been an active member of World Commerce & Contracting (including several terms on the Advisory Council), leading to his "Fellow" status award earlier this year. His commitment to pro bono work has earned him numerous awards. Jerry holds a bachelor's degree in Communications, a master's degree in Journalism, and a law degree. Since retiring from Verizon in March, Jerry has advised several start-ups on commercial and regulatory matters and consulted with Frontier Communications. He holds an advisory role at AI 2030 and has begun a Monthly AI Litigation Review.

- **Jonathan Gonzalez**, Jonathan has 17 years' experience working with multilateral organisations (World Bank, Asian Development Bank, OECD, UNESCO, APEC, and ASEAN) and leading technology companies to develop whitepapers and reports on a wide range of policy issues, including the digital transformation of governments and the impact of AI in Asia's digital economies.

- **Kate Shcheglova-Goldfinch**, Kate is on the list of Top3 UK Banker of the Year (Women in Finance Awards, 2023), TOP10 Policy makers and regulatory experts (Women UK Powerlist'23 by Innovate Finance), UN Women UK'24 Delegate developing tech diversity. Last four years Kate led the fintech and regulatory stream as an external Senior PM at EBRD, serving local central banks, creating regulatory acts and deploying regulatory sandbox legal frameworks (first global regulatory sandbox deployed under the war conditions for Ukrainian central bank, went live in March 23).

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- <u>Matthew Gardiner</u>, Matthew advises leaders of financial institutions, FTSE 100 and frontier tech companies, regulators and policy makers around the globe on developing and deploying GenerativeAI, web3 and frontier tech. Matthew has helped multiple companies swiftly move ahead of the curve and define their futures with emergent architectures.

- <u>Melanie Dow</u>, Melanie has a plethora of experience in publishing, working at the intersection of blockchain and AI, she has her finger on the pulse of the latest technology.

- <u>Michael Boevink</u>, Michael Boevink has more than 20 years management experience in the fintech and banking industry and is founder of his own investment company Boevink Group. Mr. Boevink specialises in capital raising, scaling and executing go-to-market strategies and business development growth in global markets and is engaged in companies as Raimac Financial Technology - Raimac.io - a programmable payment solution. He holds an MBA from the University of Bradford.

- <u>Parul Benien</u>, Parul Benien is people-centric innovator, driving change and achieving results. Her expertise spans across business development, angel investing, venture capital, valorization, licensing, and the creation of spin-offs. She has a focus on data, AI and its intersection with diagnostics, global health, cancer research, drug delivery, and cell biology.

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- <u>Thea Montgomerie Anderson</u>, Thea is the visionary co- founder of AI Spy Media, a dynamic brand encompassing a magazine, podcast, Substack, networking events, and media production services. AI Spy Media is dedicated to celebrating the positive side of AI and entrepreneurship, bringing the stories of founders, investors, and AI tech communities to life. Through these platforms, Thea aims to build a community that inspires and educates, showcasing the transformative potential of artificial intelligence.

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