

The right to explanation in the AI Act

Business manual



Enlightenment 4.0 – Human understanding of AI decision-making
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1 Introduction

1.1 Background

This manual has been developed as part of the project "**Enlightenment 4.0 – Human understanding of AI decision-making**". It has been written by the Research Institute - Digital Human Rights Center on behalf of the Federal Ministry of Labour, Social Affairs, Health, Care and Consumer Protection (hereinafter referred to as "Ministry of Social Affairs"). The document at hand is dedicated to the **right to explanation as outlined in Article 86** of the Regulation of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence ("AI Act").¹

Persons affected by AI-supported decisions are entitled to this right under specific conditions. Examples of situations in which AI-based systems may be involved in decision-making include credit scoring, health and life insurance, AI-based emotion recognition in marketing and sales promotion, and in churn predictions, to name but a few.

However, Article 86 AI Act does not provide detailed instructions on how companies must comply with the right to explanation in practice and what specific information must be provided. Nevertheless, it is immensely important that companies and organisations fulfil this right in an appropriate manner in terms of compliance with the principles of transparency and accountability. In addition to the legal obligations, the requirement to comply with ethical principles has also found its way into the debate on artificial intelligence and has become a central cornerstone of the Austria's AI strategy.

This is where this manual becomes pertinent, with the aim of taking appropriate account of the high legal and ethical standards, which can strengthen the trust of consumers in both the company and in AI in general. In accordance with an approach oriented towards the common good and developed on the basis of **fundamental and human rights**, the responsible use of artificial intelligence should also be guaranteed. The right to explanation is considered a central pillar for the realisation of such an approach, as it is often the prerequisite for affected persons to be able to exercise their rights such as claiming compensation or taking legal action.

¹ The right to explanation is referred to in Article 86 AI Act as the "right to explanation of individual decision-making".

Definition Artificial Intelligence (AI)



The term "**AI system**" means 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 (Article 3(1) AI Act). It should be noted that the interpretation of the term "AI system" is currently legally unclear and it remains challenging to differentiate between AI systems and simple algorithms.

1.2 Purpose of this manual

This **manual provides a concise description and recommendations on implementing the right to explanation in practice**, with specific case studies ("Use Cases") illustrating the recommendations in order to ensure the practical relevance of this manual. This manual includes model letters in the appendix that can be used as templates for company correspondence. However, these should be adapted to each situation, as they are intended to provide guidance without any guarantee of completeness. In addition, the manual includes related sociological and ethical considerations in order to provide a more comprehensive understanding of Art 86 AI Act.

The manual is part of a comprehensive **package of documents**, which, on the one hand, includes a **report** that forms the theoretical basis for the information provided in the manual. The report also explains the **methodological approach to the development of the project**. In addition, a second manual aimed at consumers is available, which contains information on how they can exercise their right to explanation. All documents are available on the website of the Ministry of Social Affairs.²

It should also be noted that this manual contains recommendations that are based on legally well-founded arguments, but it remains to be seen to what extent they will be taken up in any implementing measures or case law. Nevertheless, it is recommended that these recommendations be followed as comprehensively and completely as possible, as this is beneficial for the transparency and traceability of corporate processes and, aside from the fulfilment of legally binding obligations, strengthens trust in companies that use high-risk AI.

² Cf. Website of the Federal Ministry for Social Affairs, Health, Care and Consumer Protection – reports and studies in the field of consumer policy.

1.3 Target groups

This manual has been specifically created for private-sector companies that use AI systems in decision-making processes. It is primarily the employees of these companies who are confronted with the claims of affected persons and often do not know exactly how to respond appropriately. In addition, the manual will also be of interest to other organisations and entities as well as legal practitioners. The manual has been developed following consultation with stakeholders from the business side, representatives of public authorities, representatives of business-related organisations and company representatives in order to incorporate insights from practice in the best possible way.

2 Selected case studies

The use of AI systems to support or automate decision-making processes is already part of everyday business life or is at least discussed in certain sectors. Some examples of use cases are presented below to illustrate the use of AI for decision-making and the associated legal requirements.

Further information on the individual issues and the specific legal classification of the use cases can be found in the report in Section 5.3, where the general applicability of the GDPR and the AI Act to the use cases was examined, as both legal acts are relevant to AI-based decision-making and valuable links can be established between Article 86 of the AI Act and the relevant provisions of the GDPR (in particular Article 22 on automated decision-making and the corresponding right of access under Article 15(1)(h)). The individual requirements of Article 86 AI Act were then examined on the basis of the use cases. This manual follows a similar structure and repeatedly refers to the use cases as examples when illustrating the requirements of Article 86.

Use Cases

Use Case 1: Personalised pricing in the case of life and health insurance

Insurance companies can use AI to evaluate the risk of health factors when issuing policies. This evaluation frequently involves the creation of personality profiles (“profiling”) and can have a substantial impact on individual’s livelihoods and health. Consequently, the AI Act categorises this as high-risk AI, which may also be subject to Article 22 GDPR.

Use Case 2: Churn Predictions

AI systems are often used to detect customer churn indicators and to initiate appropriate actions in a timely manner to persuade customers to stay. In principle, this application of AI is not considered to be high-risk, unless the churn predictions are made with a high-risk AI system (e.g. an emotion recognition system). If they are based on profiling, they also fall within the scope of Article 22 of the GDPR.



Use Case 3: Credit scoring

In many sectors, AI systems are used to calculate a person’s creditworthiness (through a “score”) based on specific characteristics and data. This score is then used to decide whether or not to enter into a contract with that person and, if so, the terms of the contract. This process is relevant for a wide range of sectors, including loan applications, electricity, rental, and mobile phone contracts, and thus to essential services. In light of this, the AI Act classifies these AI systems as high-risk. In this context, Article 22 of the GDPR is also relevant, since the ‘score value’ has a significant influence on the allocation of services.

Use Case 4: Emotion recognition in marketing

Emotion recognition systems are used in these areas to assess consumer responses to products, thereby potentially influencing also purchasing decisions. Consequently, the AI Act categorises these systems as high-risk AI. Potential applications include automated gesture recognition in sports betting advertising (Use Case 4.1), individual pricing of products based on recognised emotions in the context of identity verification (Use Case 4.2), emotion recognition for product enhancement (Use Case 4.3.a), and customer satisfaction analysis through AI evaluation of feedback (Use Case 4.3.b). In certain instances, Article 22 of the GDPR may also be applicable.

3 The right to explanation

3.1 AI Act: General information

The **AI Act** was published in the Official Journal of the European Union on 12 July 2024 and entered into force in August 2024, with Article 86 applying from August 2026. The AI Act is a Europe-wide sector-independent regulation of AI.

The AI Act follows a risk-based approach, categorising AI systems into different risk classes depending on their type, area of application and potential risks. These classes are then linked to different obligations, with **prohibited practices** at the top of the "risk pyramid". Below is the category of **high-risk AI systems**, which is the main focus of this manual. Article 86 AI Act applies to so-called "stand-alone" high-risk AI systems pursuant to Article 6(2) in conjunction with Annex III AI Act. While an AI system may initially appear to meet the criteria for a "stand-alone" high-risk AI system, it is important to note that **exceptions pursuant to Article 6(3) AI Act** to this categorisation may apply if there is no significant risk to health, safety or fundamental rights (e.g. the mere improvement of the linguistic style of a document). In addition, the AI Act provides for certain **information and transparency obligations** for AI systems that interact directly with natural persons or generate synthetic content. There are also transparency obligations for **general-purpose AI models (GPAI)** that can be used for a wide range of tasks and additional obligations apply if they pose significant risks. These categories are not relevant for the manual at hand and will therefore not be discussed in detail. For all other AI systems that do not fall within any of the risk categories mentioned so far, there are no specific provisions under the AI Act.

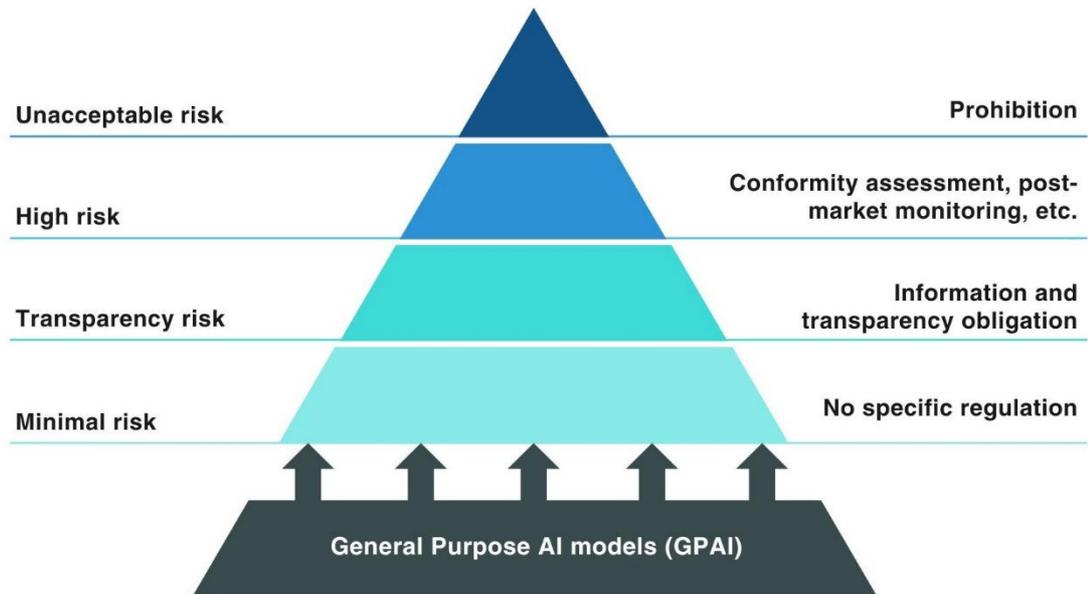


Figure 1 : Risk pyramid of the AI Act, source: European Parliamentary Research Service (EPRS)

It is important to distinguish between the **providers** of high-risk AI systems (i.e. companies that develop and put an AI system on the market) and **deployers** of AI systems (i.e. professional users of AI systems such as public authorities, banks or insurance companies). The right to explanation under Article 86 AI Act is directed against deployers of stand-alone high-risk AI systems.

GDPR reference



Please note that the AI Act does not affect the applicability of the GDPR. This means that data protection obligations always apply in addition to the requirements of the AI Act as soon as personal data is processed. For example, data processing must be based on a legal basis pursuant to Article 6 and 9 GDPR and the data protection principles of Article 5 GDPR must be complied with. Additionally, certain automated decision-making processes are prohibited under Article 22 GDPR.

Depending on whether a company is a controller or a processor under data protection law, different specific obligations apply. These roles do not necessarily correspond to the distribution of roles defined under the AI Act (provider vs. deployer).

3.2 The scope of application of Article 86 AI Act

Article 86 AI Act stipulates that individuals have a right to explanation if they are affected by a decision made by a deployer on the basis of a high-risk AI system.

The right applies to high-risk AI systems listed in Annex III AI Act (except for critical infrastructure) and to decisions that have **legal effects** on the persons affected or similarly significantly affect them in a way that they consider having an adverse impact on their **health, safety** or **fundamental rights**.

Affected persons then have the right to obtain from the deployer a **clear and meaningful explanation** of the **role of the AI-system** in the decision-making procedure and of the **main elements** of the decision taken.

This right does not apply to the use of AI-systems where **exceptions** follow from Union or national law. Furthermore, Article 86 only applies to the extent that the right is not otherwise provided for under Union law.

Deployer

The claim under Art 86 AI Act is directed towards the **deployer** of the system, i.e. the companies or organisations that use the system under their authority as part of their professional activities. The company in question must either have its place of establishment within the Union or it may also be established in a third country, provided that the output produced by the system is used within the Union.

If an insurance company procures an AI system from a third party for the purpose of calculating price adjustments for its customers, the insurance company is considered the deployer against whom the right to explanation outlined in Article 86 AI Act can be exercised.

However, it is more challenging to assess cases involving the use of AI systems to generate outputs, such as credit reference agencies utilising AI systems to calculate scores, which are then provided to other companies for decision-making purposes, such as mobile phone companies that employ the score value to determine customers' creditworthiness. However, since 'score values' can also represent decisions that prepare the main decision (e.g. issuing a mobile phone contract), the right to explanation will probably be enforceable against the deployer, i.e. the credit reference agency, which uses the AI system under its authority. Affected parties can ascertain the credit reference agency from which the mobile phone company procured the 'score value' by exercising their right to access under Article 15 GDPR.

Decision

Furthermore, the deployer must have made its **decision** using the output from its high-risk AI system. These include preliminary decisions that are essential for the

main decision (e.g. calculation of a "credit score", based on which a decision on creditworthiness is ultimately made) or measures (e.g. personalised placement of advertising, service offers, etc.).

Influence of the AI system

The decision must be made on the **basis of the system's output**. This means that the output of the AI system must be relevant to the actual decision and must not play a subordinate role. Furthermore, the system does not have to reach a decision itself, nor is it required to make the decision in a (fully) automated manner (in contrast to Article 22 GDPR). This means that human decisions involving AI are also included. Article 14 AI Act on human oversight only requires general supervision of the high-risk AI system, rather than a detailed examination of each decision.

This requirement can be ideally illustrated by Use Case 4 on emotion recognition. Such a decision would be the case when using gesture recognition to determine reactions in advertising for sports betting, to increase its efficiency (Use Case 4.1), provided that the advertising is only shown to certain users based on their emotional reactions.

The same applies to Use Case 4.2, where prices for flight bookings are adjusted based on emotions detected during the identification process.

However, this classification is questionable when using emotion recognition in marketing for goods and services to determine the extent to which these can be adapted to increase customer satisfaction (Use Case 4.3). While decisions may be made based on the output of an emotion recognition system (e.g. deciding how services will be improved in the future), these do not necessarily have to affect individuals. Depending on the corresponding reaction, this may concern cases in which emotion detection is carried out on the basis of texts or audio files of voice recordings to analyse the satisfaction of existing customers and to respond with general improvement measures (Use Case 4.3.b).

In contrast, when it comes to adjusting travel offers based on emotional reactions to advertising videos (Use Case 4.3.a), a decision is likely to be made based on the output of an emotion recognition system that impacts the respective person (prospective customer).

High-risk AI system

Additionally, the AI system in question must fall into the category of **high-risk AI systems** listed in Annex III AI Act (with the exception of critical infrastructure). This includes AI systems used for pricing in the case of life and health insurance, AI systems used for "churn predictions" provided they are used in conjunction with high-risk AI systems (e.g. emotion recognition systems) and AI systems used for evaluating the creditworthiness, excluding systems designed for detecting financial fraud.

Regarding emotion recognition, Use Case 4.1 and Use Case 4.2 can be categorised as high-risk. In principle, this also applies to Use Case 4.3, unless an exception pursuant to Article 6(3)(b) AI Act applies (see below).

Exception

The system must **not be exempt from classification as a high-risk AI under Article 6(3) AI Act**, because it does not influence decision-making and thus poses no significant risk of harm to the health, safety and fundamental rights of affected persons. This is the case if the system only performs a narrow procedural task, is used to improve previously completed human activities, is not meant to replace a human assessment or only performs preparatory tasks. If a system listed in Annex III AI Act performs profiling of natural persons, it is in any case considered high-risk AI.

With regard to Use Case 4.3, it could be considered in the context of improving completed services whether the conditions for the exemption under Article 6(3)(b) AI Act are met (improvement of completed human activities). In general, however, caution should be exercised when invoking the exemption in the case of emotion recognition, given the potential intrusive nature of such systems.

Legal effects

The decision must produce **legal effects** for the person affected, which are understood to encompass the establishment, termination or adjustment of a legal position. It is presumed that only "negative" legal effects are included in this context. Consequently, the simple acceptance of a loan application will not trigger the right under Art 86 AI Act. However, it is important to note that it can often be challenging to clearly determine whether an effect is negative or positive, and the criterion should therefore be interpreted broadly in cases of uncertainty.

The analysis of customer feedback using AI-based emotion recognition systems does not in itself produce legal effects for the persons affected. However, if a decision based on the analysis is taken to terminate contracts with customers classified as dissatisfied, this would be a decision with legal effects for the persons affected.

Being similarly affected

Alternatively, a claim can be made if persons are **similarly significantly affected** by the decision in their **health, safety or fundamental rights**. It should be emphasised that there is an adverse impact if the affected persons themselves consider it as such. Therefore, the affected persons must explain in their request for explanation how they are affected by the decision, unless this is objectively obvious. This includes, for example, decisions based on discriminatory criteria or the placement of advertising for sports betting to persons with an addiction to gambling.

The mere use of AI systems for managing documents or improving text does not constitute an impairment. In "marginal cases", such as the placement of personalised advertising based on emotion recognition, the subjective perspective of the affected person is the primary factor in determining whether an impairment has occurred. The categorisation of purely financial disadvantages as an impairment is a contentious issue and must also be examined from the perspective of those affected.

Exceptions in Article 86 AI Act

On the one hand, the right to explanation does not apply to AI systems for which certain **exceptions** follow from **national law or Union law** (Article 86(2) AI Act). For example, the scope of the information may be restricted in cases where providing the information would mean a threat of disclosure of trade secrets. However, companies must not refuse to provide all information in such cases.

In addition, Article 86 AI Act does not apply if the right it stipulates is already laid down in other Union acts ("**subsidiarity clause**" pursuant to Article 86(3) AI Act). At present it remains unclear to which extent this clause relates to the right to access under Art 15(1)(h) GDPR, which applies where an individual is subject to automated decision-making as outlined in Article 22 GDPR. Therefore, it is necessary to await ECJ case law on this matter. In the meantime, it is advisable to assume the applicability of Article 86 AI Act in cases of uncertainty ("**gap-filler position**").

The scope of Article 86 AI Act and Article 15 GDPR are often not identical: For instance, a decision taken in the context of an AI application may affect persons other than those whose data is processed. In such a case, Article 22 GDPR would not be applicable, but Article 86 AI Act would be. The same applies if an AI system processes data that does not fall under the definition of personal data of the GDPR.

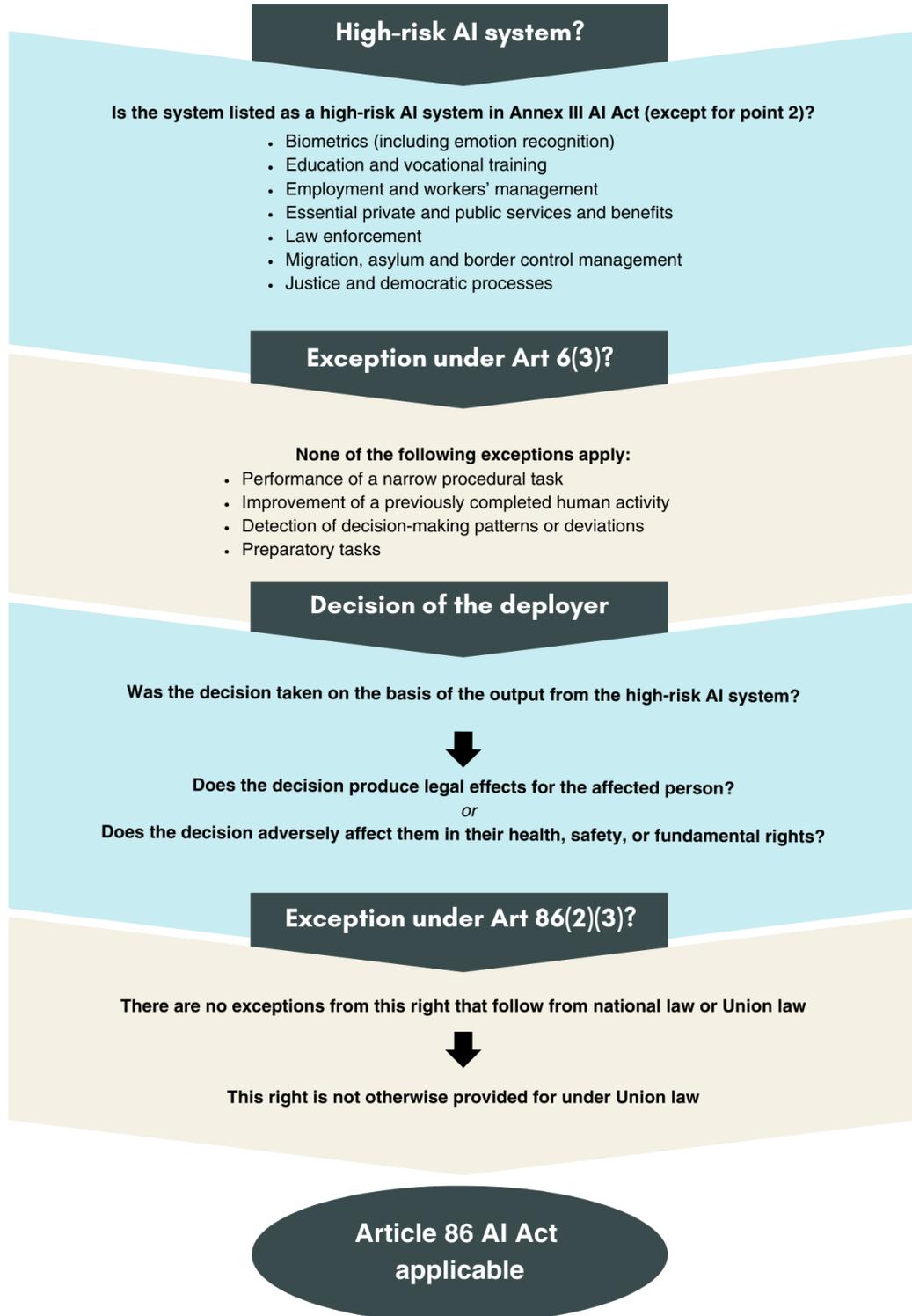
Furthermore, it is conceivable that legal entities could be affected within the meaning of Article 86 AI Act, in which case the GDPR would not be applicable, because its scope of application is limited to personal data of natural persons. However, the wording of Article 86 AI Act does not differentiate in this respect (in contrast to other provisions of the AI Act).

In instances where the decision-making process is not entirely automated or significantly influenced by AI, Article 22 GDPR would not be applicable (this is particularly conceivable in the context of emotion recognition in Use Case 4.3.b). However, these criteria are not decisive for the applicability of Article 86 AI Act.

In practice, for example, both claims can be examined and explained to the affected person in a joint response. If the affected person does not explicitly state in their request for explanation which of the two legal claims they are referring to, both claims must be responded to in case of doubt.

Checklist: Applicability of Article 86 AI Act

The specific conditions for the applicability of Article 86 AI Act are summarised in the following checklist:



3.3 Elements of the right to explanation

According to Article 86 of the AI Act, affected persons are entitled to a clear and meaningful explanation of the role of the AI system in the decision-making procedure and the main elements of the decision taken. In summary, this results in the following list of information that must be provided, which is described in more detail below:³

- ◆ The explanation must be **easy to understand, comprehensible and not too technical**. While it should not be overly complex, it must be as complete as possible. Machine learning systems can present particular challenges in terms of transparency, as the inner processes of these systems may be opaque and a complete explanation of all parameters of complex models is probably impossible (the so-called "**black box problem**"). In such cases, it is essential to prioritise the needs of the affected persons, as the explanation ultimately serves to empower them to exercise further rights based on the information provided. The final point of reference is therefore the perspective of the affected persons, and whether they can make use of the explanation. Please note, however, that this must not lead to providing incomplete information to the affected persons.
- ◆ Explanation of the **main reasons for the decision**: This includes the key influencing criteria that were utilised in the decision-making procedure. Additionally, it encompasses so-called "preliminary decisions" that determine the final "main decision" (e.g. segmentation of target groups). It also includes the input data concerning the person affected (e.g. income data, previous transactions, specific emotions, etc.) and the data employed for decision-making. In instances where the disclosure involves personal data from third parties, it can only be provided in aggregated form or as statistical features.
- ◆ Explanation of the **weighting of criteria**: The explanation should include information on the extent to which the criteria influenced the decision (for example by considering whether gender, place of residence or the last bank statement influenced the decision on the conclusion of a mobile phone contract with a mobile phone company).
- ◆ The **impact of the decision on the affected person**: While it is impossible for the deployer to predict all the effects of the decision on the affected person, the most significant effects (in particular legal effects) must be communicated (e.g. effects on creditworthiness, access to certain services, financial implications).

³ Please refer to the report for more details.

- ◆ **The processing logic:** This encompasses a description of the system processes and on how the algorithm used roughly operates (e.g. which model was used). A detailed explanation of the algorithmic code and the system's functionality is not required, and in view of the often complex underlying processes and possible trade secrets, it is probably not useful either.
- ◆ **Contributions of the AI system to the decision-making procedure:** This includes a qualitative description of the specific function of the AI system, for example the analysis of data, the evaluation of criteria, pre-selections, categorisations, etc. Conversely, this means that the human level of participation in the decision-making procedure must also be reported, along with information on whether there was scope for human correction and, if so, whether and to what extent it was used.
- ◆ **Significance:** It is important to explain the extent to which the AI system contributed to the final decision (a differentiation between low, medium and high degrees of contribution seems sufficient here). The text should also explain for which aspect of the decision the AI system was particularly relevant.

Recommendation: Provide additional information

Since Article 86 of the AI Act does not clearly define which information must be provided, it is recommended that the following information be added in the interest of a fundamental rights- and consumer-friendly interpretation:

- ◆ **Chains of responsibility:** It should be indicated who the responsible person or department is and how it was ensured that the decision meets certain criteria (e.g. fairness, transparency, non-discrimination, etc.).
- ◆ **Contractual or legal basis:** It is recommended to clearly state the contractual or legal basis of the decision-making procedure or the processing of the required data, if such a basis exists. For example, if the decision-making procedure is based on the processing of personal data, the relevant legal bases under the GDPR must be stated (Article 6 and, in the case of sensitive data, Article 9 GDPR). If the AI system is used in the context of public administration, reference must also be made to the legal bases of the administrative action in accordance with the principle of legality (Article 18 of the Austrian Federal Constitution).
- ◆ **Right to lodge a complaint:** In addition to the right to explanation of individual decision-making, individuals have the right to lodge a complaint with the competent market surveillance authority in accordance with Article 85 AI Act if they believe that the provisions of the AI Act have been violated.

It is recommended that the affected persons are also informed of this right in the response to the request for explanation.⁴

- ◆ **Further information:** It is recommended to provide the affected persons with further information about the system used, how it works and whether the system is registered in the EU database in accordance with Article 49 AI Act in conjunction with Article 71 AI Act. For this purpose, they can be referred either to the company's privacy policy, to the company dashboard or the FAQ section on the company website, to other web links or to the EU database itself.



Rules of thumb

- Different situations give rise to different levels of the need for explanation
- The more serious the expected impairments, the higher the requirements for the information.
- Point of reference: the explanation must be suitable for those affected to exercise their rights.

A model letter can be found in Section 6.2.

⁴ No specific authority has yet been designated. The competent national authorities for implementing the provisions of the AI Act must be designated by 2 August 2025. See the timetable of the "RTR KI-Servicestelle": [RTR website with a text-based timetable](#).

3.4 Formal aspects

In formal terms, the following aspects are relevant:

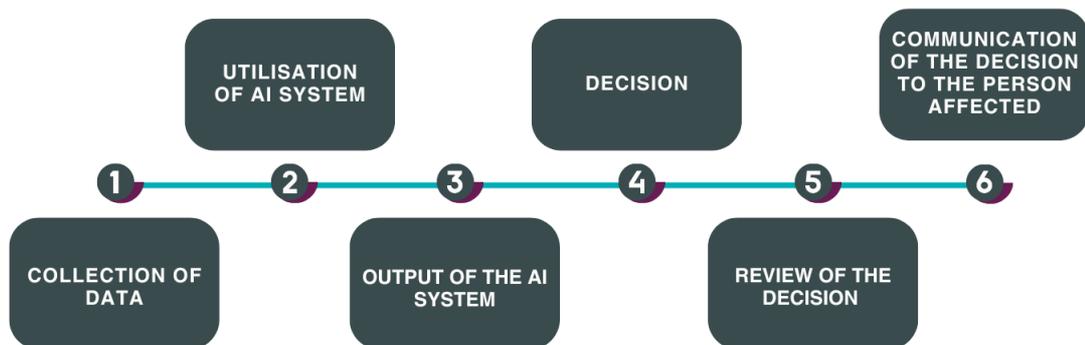
- ◆ **Deadline:** The AI Act does not specify a deadline until which the deployer must respond to a request for information under Article 86 AI Act. It is therefore recommended to use the corresponding provisions of the GDPR by analogy, given that, in practice, affected persons can exercise both the right of access under Article 15 GDPR and the right to explanation under Article 86 AI Act concurrently and a different deadline would not be appropriate. Article 12 GDPR can be cited as a point of reference, according to which the data subject must be provided with the relevant information without undue delay and in any case **within one month of receipt of the request for information**. However, it should be noted that, in cases where the complexity of the AI system is such that it is not possible to collect the relevant information within this period, a longer period may be necessary. This will need to be assessed on a case-by-case basis.
- ◆ **Form of the explanation:** The AI Act does not contain any requirements in this regard either, which is why reference should again be made to Article 12 GDPR for the reasons stated above. Accordingly, the information may be provided in **any appropriate form**, such as in writing or by electronic means. At the request of the person affected, the information may also be provided orally. If the request is submitted by electronic means, the response should also be made by electronic means, where possible.
- ◆ **Costs of the explanation:** The information must be provided free of charge, unless the requests are excessive (please refer to the corresponding GDPR provisions for further details).
- ◆ **Negative information:** It is conceivable that individuals may assert the right to explanation under Article 86 AI Act even though they are not entitled to it. This may occur in instances where they are not affected by a decision, or where a decision concerning them was not taken with the support of a high-risk AI system, or by a high-risk AI system outside the scope of Annex III AI Act. In such cases, negative information should be provided in any event, and it should be explained why Article 86 AI Act does not apply. This recommendation is made for the sake of documentation and in the interest of customer friendliness. A model letter can be found in Section 6.1.

3.5 Information on the right to explanation

Although not explicitly provided for in Article 86 AI Act, it can be assumed, in the sense of a broad interpretation of Article 26 (11) AI Act⁵, that the deployer of a high-risk AI system that can take decisions affecting natural persons or provide assistance in such decisions must inform these persons that they have a right to explanation under the AI Act.

Timing of the information

The decision-making procedure involves various steps that either occur simultaneously or may be significantly spaced out over time. The process can be roughly divided into the following steps, although not all of these steps always have to be part of the process in the order shown:



Therefore it is important to pay close attention to the point in time at which (affected) individuals must be informed of the right under Article 86 AI Act. It is recommended that the information be provided to those affected as early as possible, namely when their data is collected or when the AI system is used. Even if it is not yet clear at the time of the use of the AI system whether a decision is to be made on the basis of the AI system's output, it is recommended to point out that decisions of a certain kind *can* be made on the basis of the data collected and that, in the event of such a decision, the right to explanation applies; in any case, the possibility of asserting the right to explanation must also be explained in the decision notice itself.

⁵ The exact line of argumentation can be found in the project report.

Examples



- Where the use cases involve high-risk AI systems making decisions about natural persons, affected persons are to be informed as early as possible of their right to explanation. For Use Case 4 on emotion recognition, this is particularly relevant for the Use Cases 4.1 and 4.2, but may also apply to Use Case 4.3. In these cases, the use of the AI system should be explained to individuals already prior to the use of the AI and should include the purpose and nature of the decision and the right under Article 86 AI Act (or, where relevant, its non-applicability).
- In particular, in Use Case 4.3.b, the (last) contact with the customer at the time the AI is used may have taken place some time ago, which is why particular attention should be paid to the implementation of the information obligations here. Depending on the circumstances of the case, this would be conceivable, for example, in the context of implementing data protection information obligations towards data subjects.
- If, for example, in the context of Use Case 4.3, it is not yet clear whether a decision will be made on the basis of the use of emotion recognition, it should nevertheless be assumed that the obligation to inform affected persons in advance applies.

Placement of the information

The placement of information on the right to explanation should be chosen in such a way that affected persons can both access the information and interact with the company easily. The following channels are recommended, preferably in combination:

- ◆ **Direct notification in the decision notice** (e.g. clearly visible in the email, letter or other communication informing the affected persons of the decision using a high-risk AI system).
- ◆ **Company-owned channels** (such as in a separate section on the company's website, in a designated section in the privacy policy, in the FAQ section, or in any transparency reports).
- ◆ **Contractual relationships:** If it is intended to enter into a contractual relationship, the right under Article 86 AI Act can already be referred to in the contractual terms and conditions.
- ◆ **Digital decision-making processes:** In the case of decision-making procedures on online portals, the information can be displayed immediately after the decision has been made, for example in the form of a hyperlink.

- ◆ **Customer areas:** When communicating with consumers via a service hotline, the information could be provided directly by the service agent or as part of a tape recording. Similarly, for users registered online, a separate "Your rights" section could be included in their account dashboard.
- ◆ **Physical documents:** If the company has physical locations, relevant information could be provided in the form of information brochures at the business premises.

Examples



- For instance, if a decision is made on a premium adjustment for life insurance using a high-risk AI system, the deployer should inform the affected person at the time the contract is concluded that a high-risk AI system is assisting in the calculation of the premium and that a decision on a premium adjustment can be made on the basis of this calculation (Use case 1).
- If an online loan application is submitted, the information could be displayed in the form of a hyperlink (Use case 3).

Templates for this information can be found in Section 6.3.

3.6 Further information obligations under the AI Act

- ◆ AI systems that interact directly with people or generate so-called "deep fakes" must be disclosed (Article 50 (1) and (4) AI Act).
- ◆ Employers must inform workers' representatives and the affected workers of the planned use of a high-risk AI system before it is put into service or used at the workplace (Article 26(7) AI Act).
- ◆ **Deployers of high-risk AI systems that assist in making decisions must inform the affected persons about the use of AI** (Article 26(11) AI Act, from which the obligation to provide information on the existence of the right to explanation is derived). This also applies to cases in which Article 86 AI Act does not apply (for example, in the case of high-risk AI systems used in critical infrastructure) or if the decision would not have the necessary impact required by Article 86 AI Act.
- ◆ Similarly, the AI Act provides for disclosure obligations when using emotion recognition systems (Article 50(3) AI Act).

GDPR reference



In this context, please also note any information obligations under the GDPR. For example, data subjects must be informed of certain aspects related to data processing (e.g. the purpose of the processing, the contact details of the controller, the recipients of the data, the logic involved in cases of Article 22 GDPR, etc.) already at the time the data is collected, in accordance with Articles 13 or 14 GDPR.

3.7 Sanctions and compensation

The AI Act stipulates sanctions in the form of **administrative penalties**. However, violations of Article 86 AI Act are not subject to direct sanctions. Nevertheless, violations of the information requirement under Article 26(11) AI Act and the transparency requirements under Article 50 AI Act are generally sanctioned with fines of up to EUR 15,000,000 or in case of companies, up to 3% of the total worldwide annual turnover of the previous financial year, whichever is higher (Article 99(4)(e) AI Act).

As of February 2025, the implementation of the right under Article 86 AI Act is still pending, with the **implementing law** and the appeal process have yet to be determined. Article 86 AI Act could potentially constitute a **protective law** within the meaning of § 1311 of the Austrian Civil Code (ABGB), which in turn would be relevant for corresponding compensation. This could also allow compensation claims by injured parties who have no contract with the deployer, for pure financial losses (i.e. without damage to absolutely protected legal interests, such as life).

Another relevant legal instrument is the **new Product Liability Directive**, which entered into force in December 2024 and is to be transposed into national law by December 2026. The PLD now also covers liability for software and regulates claims for compensation by affected persons for certain damage caused by defective AI products.

Finally, it should also be mentioned that the AI Act has been incorporated into the Annex of the **Representative Actions Directive** (Article 110 AI Act). Qualified entities are entitled to take legal action in the event of violations of the AI Act.

4 Excursus: Data protection law

4.1 The right to access under the GDPR

According to **Art 15 (1) (h) GDPR**, data subjects have a right to access and to be informed. This right is particularly relevant in the context of **automated decision-making**, as outlined in **Article 22 GDPR**, and includes information on the existence of automated decision-making and meaningful information on the logic involved as well as the significance and the envisaged consequences of such processing (for a precise delineation between the data protection regulations and the provisions of the AI Act, refer to the comparative table in Section 4.2).⁶

In this context, the information on the **"logic involved"** is of particular relevance. There is a debate regarding the scope of this information, specifically whether it pertains to general information or a justification related to a specific decision. Different views are held in the relevant guidelines, national decision-making practice and literature.

An explanation of the logic involved must include the following aspects in accordance with current data protection case law (as of February 2025):

- ◆ According to the Austrian Data Protection Authority: input variables, weighting of the parameters and information on how they are determined, assignment of the data subject to an evaluation result, list of profile categories
- ◆ According to the Austrian Federal Administrative Court: Information on personal or behavioural aspects of the data subject that are used for decision-making, as well as the underlying calculation principle. The algorithm itself and the specific calculation formula do not need to be disclosed.
- ◆ According to the European Court of Justice (in the SCHUFA ruling): detailed explanations of the method of calculating the score value, reasons for the result, criteria taken into account and weighting at aggregated level
- ◆ According to the European Court of Justice (in the Dun & Bradstreet ruling): In this case, the ECJ ruled that the explanation of the logic involved must encompass the explanation of the procedures and principles which were specifically applied in the automated processing of personal data in order to obtain a particular result. The provision of such information must be comprehensible, thus enabling the data subject to exercise their rights. In

⁶ Please refer to Chapter 5.4.2 of the report for further information on the individual aspects.

instances where there is a concern about the disclosure of trade secrets, the competent supervisory authority must be consulted. The authority is tasked with balancing the interests involved and determining the extent to which information must be provided to the data subject.

Recommendation



In conclusion it is recommended that case-specific information should be provided wherever possible, because it is more valuable for the affected person than only general information. Care must always be taken to ensure that this information remains clearly comprehensible for those affected.

The scope and implications of the decision should be clearly delineated to illustrate the potential outcomes. For instance, by comparing fictitious policyholders, it can be demonstrated that more dangerous behaviour leads to higher premiums when insurance premiums are set automatically. It is therefore recommended that the scope and effects be presented as realistically as possible, for example, by using practical examples.

4.2 Comparison of the relevant provisions

	Article 86 AI Act	Article 22 GDPR
Opponent	Deployer	Controller
Entitled persons	Natural persons and legal entities	Natural persons
Type of provision	Legal entitlement (must be asserted by the person affected)	Prohibition (must be complied with by the controller)
Data processing	Any data	Personal data (of the person affected by the decision)
Role of the AI system (level of involvement)	Decision was made <i>based on the output</i> of a high-risk AI system (the system can only play a supporting role)	Decision based <i>exclusively</i> on automated processing (partially relieved by the "SCHUFA judgement", where "significance" is decisive)
System	High-risk AI system in accordance with Annex III AI Act (exception: critical infrastructure)	No differentiation by system, all types of AI systems and systems that are not AI are included
Impact	Legal effect or, in the view of the affected person, significant impairment of fundamental rights, safety or health	Legal effect or similarly significant impairment
Content of the corresponding right to information	Clear and meaningful explanation to the affected person about the role of the AI system in the decision-making process and the most important elements of decision-making	Information on the existence of automated decision-making, including profiling; meaningful information on the logic involved and the significance and the envisaged consequences of such processing
Other information obligations	Prior information obligation about the right under Art 86 AI Act pursuant to Art 26(11) AI Act	Prior information obligations pursuant to Articles 13 and 14 GDPR
Sanctions	No direct sanctions for non-compliance with Article 86; however, violations of Articles 26 and 50 may result in penalties of up to EUR 15 million or up to 3% of total annual global turnover (Cf. Art 99(4)(e) and (g) AI Act); No specific basis for liability in the AI Act	Violations of Article 15 GDPR and Article 22 GDPR can result in fines of up to EUR 20 million or up to 4% of annual global turnover (Cf. Article 83(5) GDPR;) Article 82 GDPR also lays down claims for the compensation of damages in tort
Relationship to each other	Subsidiarity of Article 86 AI Act to Article 15(1)(h) GDPR (in conjunction with Article 22 GDPR) unclear; in case of doubt, assume parallel applicability of both provisions	

5

Looking beyond the law

5.1 Practical enforceability

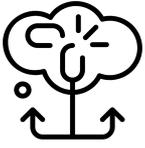
A number of empirical studies demonstrate that, in practice, **requests for information** are often either not answered at all or not answered in a legally compliant manner. To ensure the effective enforcement of the right to explanation, the following measures are recommended:

- ◆ **Provision of contact details** or a clearly indicated communication channel for affected persons. It is vital that both the AI-based data processing and the information about it meet the requirement of transparency. In this sense, the information should be **complete and sufficiently specific** for the affected persons, as well as **clear and easy to understand**, i.e. free of convoluted sentences or excessive legal or technical jargon.

The phenomenon of “**automation bias**” is well known in the context of AI-based applications. The following measures are recommended to reduce the risks arising from this phenomenon:

- ◆ **Design and development of a transparent system** that displays and communicates its own uncertainties to employees, thereby helping them to better assess the reliability of automated recommendations. This implies a regular technical validation and ensuring the accuracy and robustness of the system.
- ◆ **Training and continuous sensitisation** of employees using automated systems to raise awareness of the problem of automation bias and promote the ability to make more informed decisions, to avoid automation-related negligence and to critically question automated decisions.
- ◆ In addition, ensuring **accountability for decisions** within the organisation and the designation of appropriate contact persons is recommended.

Automation Bias



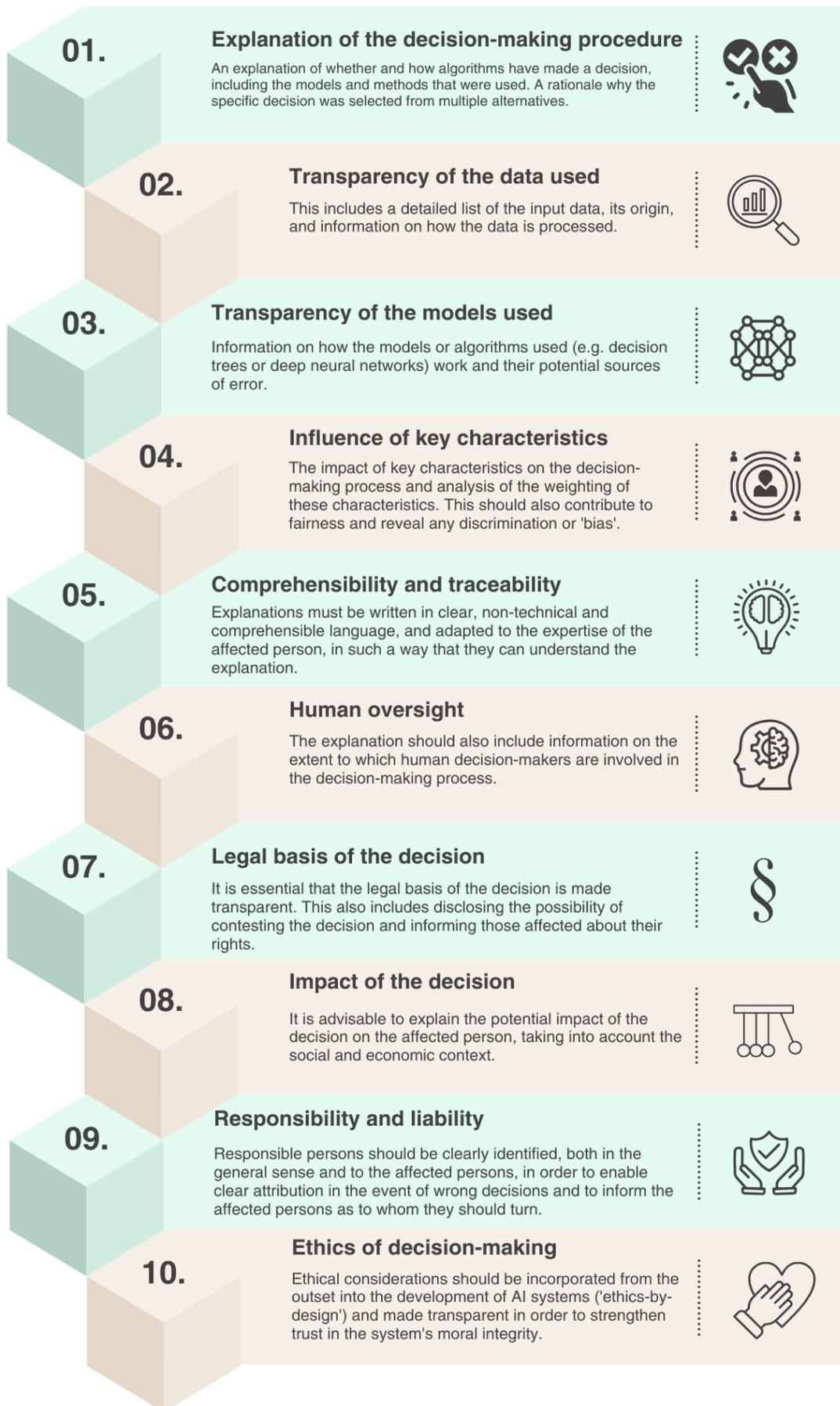
This refers to the tendency to rely excessively on automated decision-making systems in certain situations without critically examining their output. Consequently, automated decisions or recommendations may be accepted as valid and justified for practical use, despite the fact that they provide incorrect or incomplete information.

5.2 Strengthening trust in AI and companies

In response to the challenges associated with the increasing technological progress in AI research, numerous organisations have developed ethical guidelines to serve as a standard or orientation for the development and use of AI. Examples include the Ethics Guidelines for Trustworthy AI of the Independent High-Level Expert Group on Artificial Intelligence together with the "ALTAI" assessment list that builds on them, the OECD AI Principles and the UNESCO Recommendations on the Ethics of Artificial Intelligence.⁷ These documents emphasise the importance of trustworthy AI and are based on the preservation of human dignity and autonomy. These guidelines highlight the principles of transparency and explainability of AI-supported processes, along with other principles such as accountability, non-discrimination, efficiency and trust, which are also crucial for the right to explanation.

In circumstances where technological progress moves faster than legal regulation, recourse to these ethical principles is particularly pertinent. In such cases, ethical principles can serve as a 'final barrier' that must not be crossed by technology, even in the absence of legal restrictions. In addition, compliance with these principles serves as a powerful signal to strengthen consumer trust in AI and the companies using it, demonstrating a firm commitment to the high standard of consumer protection. The following principles are key to implementing the right to explanation beyond legal requirements:

⁷ For further information and links to the documents, please refer to the project report.



6 Model letters

The subsequent section contains model letters for implementing the legal claim and for providing proper information in response to requests in accordance with Article 86 of the AI Act.

The first model deals with possible cases of so-called negative information, i.e. answering requests in which the right to explanation under Article 86 AI Act does not apply for certain reasons.

The second model is used to provide the actual information under Article 86 AI Act. In addition to the core information, such as the role of the AI system or the main elements of the decision, it is recommended that information about the human review of the decision should also be included, provided that such a review process has taken place. Furthermore, deployers are advised to refer to the right to lodge a complaint with the relevant market surveillance authority under Article 85 AI Act, with the contact details of the competent authority to be attached as soon as it is designated.

Finally, a template is provided to fulfil the information requirement, whereby the aim is to inform affected persons that they have a right to explanation under Article 86 AI Act. This template can be used if the information is provided by email or post. However, it should be noted that this form is not obligatory and that alternative company channels, such as the website, can also be used to provide this information.

Please note that these model letters are intended to provide guidance only and are not guaranteed to be complete. They may need to be adapted depending on the situation.

6.1 Negative information

[Company contact details]

[Date]

[Contact details of the applicant]

Subject: Request for explanation pursuant to Art 86 AI Act

Dear [name of applicant],

We refer to the request for explanation submitted by you pursuant to Article 86 of Regulation (EU) 2024/1689 (AI Act) dated *[date of request]* regarding the decision *[description of the decision]*.

In accordance with Article 86 AI Act, we are obliged to provide you with a clear and meaningful explanation of the role of the AI system in the decision-making procedure and the main elements of the decision taken, provided that a high-risk AI system was used for taking this decision about you.

Since *[list reasons for negative information here: e.g. "the decision was not taken using a high-risk AI system" or "the decision has no legal effect on you"]*, Article 86 AI Act does not apply.

For detailed information on the (AI) system used and how it works, please refer to our *[documentation/data protection information]*, which you can view at *[link to the relevant resource]*.

Should you have any further questions or require additional information, please do not hesitate to contact us.

Yours sincerely,

[Name of contact person]

[Position]

[Company name]

[Contact information]

6.2 Response to the request for explanation

[Company contact details]

[Date]

[Contact details of the applicant]

Subject: Response to request for explanation pursuant to Article 86 AI Act

Dear *[name of the applicant]*,

we acknowledge receipt of your request for explanation dated *[date of request]* regarding the decision *[description of the decision, e.g.: "the rejection of your loan application"]*, which was made using a high-risk AI system.

Either:

- After evaluation, we hereby comply with your request and provide you with the following information.

Alternatively:

- As your request for explanation is complex *[state reasons for complexity here, e.g. "because the response requires comprehensive data collection"]*, a response will take some time. We will comply with your request within the *[x month/s]*. *[In this case the letter ends at this point]*

1. Role of the AI system in the decision-making process

- **Involvement of the AI system in the decision:** The AI system *[name/designation of the AI system]* was used for *[description of the specific function of the AI system, e.g. analysing data, evaluating criteria, performing voice analysis for emotion recognition, etc.]*. The AI system contributed to the decision-making procedure by [e.g. analysing the data and providing an assessment of the relevant parameters].
- **Significance of the system for the decision-making procedure:** The decision was influenced to a *[high / medium / low]* degree by the analysis of the AI system. The contribution of the AI system was particularly decisive with regard to *[e.g. the calculation of a score value]*, which directly influenced the recommendation for the decision.

2. Main elements of the decision taken

- **Input data and influencing criteria:** The AI system processed the following data: *[list of relevant data, e.g. demographic information, personal data]*. The following criteria additionally influenced the decision *[e.g. previous transactions, certain emotions]*. In addition, preliminary decisions played a role, e.g. *[description of which preliminary decisions had an influence such as the segmentation of target groups,]*.
- **The Processing logic:** The system analysed the input data using *[description of algorithms or models, e.g. decision trees]* to perform *[description of the objective, e.g. risk assessment]*.
- **Output:** Based on this analysis, the AI system generated the following output, which was incorporated into the final decision: *[Description of the output, e.g. a score, a classification]*.
- **Impact of the decision taken on the affected person:** The decision has the following potential impact on you: *[e.g. impact on creditworthiness, access to certain services, financial impact]*. These impacts are relevant as they could significantly affect your ability to *[explain the consequences, e.g. participation in programmes or receipt of offers for financing]*.
- **Weighting of criteria:** The key influencing criteria were weighted as follows: *[brief explanation of the importance of each criterion]*.

3. Human review and basis of the decision [recommendation]

The output provided by the AI system was reviewed by [name of person or department responsible]. [It is recommended to add a brief explanation of the parameters and the method of human review].

The decision was based on the following contractual/legal basis: [e.g. a legal basis pursuant to Article 6 (1) GDPR for the lawful processing of personal data]

4. Right to lodge a complaint [recommendation]

You have the right to lodge a complaint with the relevant market surveillance authority pursuant to Article 85 AI Act if you have grounds to believe that there has been an infringement of the provisions of Regulation (EU) 2024/1689 (AI Act).

[if necessary: printouts of the relevant data/information are enclosed with this letter].

5. Further information [recommendation]

For more detailed information about the AI system used and how it works, please refer to our *[documentation/privacy policy]*, which you can access at *[link to the relevant resource]*. *[In addition, you can find more information about the AI system*

used in the corresponding EU database in which our system is registered in accordance with Article 49 AI Act and Article 71 AI Act.]

We hope that this information has been of help to you. If you have any further questions or require additional information, please do not hesitate to contact us.

Yours sincerely,

[Name of contact person]

[Position]

[Company name]

[Contact information]

6.3 Information on the right to explanation

[Company contact details]

Information on your right to explanation pursuant to Article 86 AI Act

Dear *[name of the person to be contacted]*,

As part of our services, we use modern technologies, including high-risk AI systems as defined by Regulation (EU) 2024/1689 (AI Act). These systems are used in decision-making procedures. We highly value transparency and the protection of your rights.

In accordance with Article 86 AI Act, you have the right to receive a clear and meaningful explanation of the role of the AI system we use in decision-making procedures and the main elements of a decision taken. This applies if the system is involved in a decision that produces legal effects or similarly significantly affects you in your fundamental rights, safety or health. In particular, you may request the following information:

1. **The role of the AI system** in the decision-making procedure, including its specific contributions and the significance of this contribution for the decision.
2. **The main elements of the decision**, including:
 - a. The **processing logic**, including a description of the system process and the algorithms used.
 - b. The **system's outputs** that were incorporated into the final decision.
 - c. The **main reasons for the decision**, including key influencing criteria, input data, any preliminary decisions and the weighting of these criteria.
 - d. The **impact** of the decision on you.
3. **[Recommendation]: Information on the human review of the results generated by the AI system and - if applicable - information on the contractual or legal basis on which the decision is based [e.g. a legal basis under Art 6(1) GDPR when processing personal data].**

Please find below instructions on how to exercise your right to explanation:

If you wish to exercise your right to explanation, please contact us at any time using the following contact details:

- **E-mail address:** [insert e-mail address]
- **Postal address:** [insert postal address]
- **Telephone number:** [insert telephone number]

Please state in your request which decision or decision-making procedure your concern relates to and to what extent the decision has legal implications for you or affects your fundamental rights, safety or health. We will process your request in accordance with the legal requirements and respond to you within a period of *[recommended: one month]*.

Additional information [recommendation]:

We use our AI systems in accordance with the applicable legal and ethical standards. Our data processing and decision-making procedures are designed to ensure fairness, transparency and the protection of your rights.

*For more information about our data protection information and the use of AI systems, please refer to our [\[data protection information/information page\]](#), which you can access at the following link: [\[link\]](#). *[In addition, you can find more information about the AI system we use in the corresponding EU database in which our system is registered in accordance with Article 49 AI Act and Article 71 AI Act].**

Yours sincerely,

[Name of contact person]

[Position]

[Company name]

[Contact information]



Research Institute – Digital Human Rights Center

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