

**Interoperability comparison between  
the proposed *Artificial Intelligence and Data Act*  
and the European Union’s draft *Artificial Intelligence Act***

**Background and Overview**

On June 16, 2022, the Minister of Innovation, Science and Economic Development tabled [Bill C-27](#) before Parliament to modernize Canada’s privacy laws and to introduce a legislative framework for regulating artificial intelligence or “AI”.

Bill C-27 passed second reading in the House of Commons on April 24, 2023, and was referred for study to the Standing Committee on Industry and Technology.

Part 3 of Bill C-27, which sets out the proposed *Artificial Intelligence and Data Act* (“AIDA”), is currently the subject of testimony before the Committee. As part of his testimony, the Minister of Innovation has proposed substantive amendments to AIDA through a [letter to the INDU committee on November 28, 2023](#).

Artificial intelligence is being incorporated into a vast array of products and services that are offered and used in multiple jurisdictions around the world. It is therefore a critical public policy objective to ensure that Canadian domestic statutory frameworks and other instruments designed to ensure the responsible use of AI align and are interoperable with regulatory frameworks adopted by major trading partners. To the extent there is a challenge with the interoperability of a domestic law with international standards, there is a corresponding risk of unintentionally creating enhanced legal and financial risk for Canadian companies and otherwise undermining the development, distribution and deployment of AI systems and the products or services that incorporate them.

International standards for regulating AI are in their formative stage. On February 2, 2024, the Council of the European Union’s Committee of Permanent Representatives unanimously approved a proposed *Artificial Intelligence Act* (the “AI Act”). Publication of the [full text](#) of the AI Act now makes it possible for Parliamentarians, businesses, civil society and all other stakeholders in Canada to assess to what extent AIDA is aligned and interoperable with the AI Act.

To facilitate this interoperability assessment, AccessPrivacy has created the table set out below. The table sets out a non-exhaustive list of requirements under the AI Act and AIDA, a summary of the key distinctions in such requirements, the interoperability impact, and examples of such impact. The examples highlight that, if enacted, AIDA will impose material regulatory obligations on a substantially broader range of AI systems and machine learning models than under the AI Act. More broadly, the table highlights that the AI Act represents a more targeted, proportional, and risk-based approach to regulating AI compared to the approach reflected in AIDA.

Statutory Concept	EU AI Act	AIDA	Impact of difference	Example of impact
<p>High-risk AI system / High-impact AI system</p> <p>Areas of use</p>	<p>An AI system is classified in the AI Act as “high-risk” only if it is:</p> <p>(a) deployed in a <u>specific use-case</u> with the areas of use identified in Annex III as high-risk; or</p> <p>(b) already subject to third-party conformity assessment under existing EU product safety laws.</p> <p>(Article 6(2))</p>	<p>An AI system is classified in AIDA as a “high-impact” system if it is intended for use in matters <i>relating to</i> any <u>area of use</u> identified in Schedule 2.</p> <p>(Section 5(1) and Schedule 2)</p> <p>There are several high-impact classes of use under AIDA that are not deemed to be high-risk systems under the AI Act.</p> <p>For example, moderation and prioritization of content that is found on an online communications platform, including a search engine or social media service.</p> <p>(Schedule 2)</p>	<p>The scope of systems regulated under AIDA as “high-impact” is materially broader than “high-risk” systems under the AI Act.</p> <p>By way of example, any use of an AI system (regardless of potential risk) in matters related to the provision, cost or prioritization of any service is deemed to be high-impact under AIDA.</p> <p>By comparison, the AI Act identifies a much more limited set of specific services. In the case of private sector services, only two categories of services are identified in Annex III of the AI Act: (i) the evaluation of creditworthiness (excluding detection of financial fraud), and (ii) risk assessment and pricing in relation to life and health insurance.</p>	<p>Use of an AI system to prioritize the type and scheduling of automobile repair work to minimize impact of supply chain delays for replacement parts.</p> <p>Any AI system designed to prioritize repair work will be regulated as a high-impact system under AIDA, but will not be regulated as a high-risk system under the AI Act.</p>

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<p>High-risk AI system / High-impact AI systems</p> <p>Exceptions</p>	<p>The AI Act includes broad, risk-based exceptions.</p> <p>An AI system identified in Annex III of the AI Act as “high-risk” is not regulated as a high-risk AI system if it does not pose a significant risk of harm to the health, safety or fundamental rights of natural persons (unless the AI system performs profiling of natural persons).</p> <p>An AI system listed in Annex III will not pose a significant risk of harm if:</p> <p><i>(a) the AI system is intended to perform a narrow procedural task;</i></p> <p><i>(b) the AI system is intended to improve the result of a previously completed human activity;</i></p> <p><i>(c) the AI system is intended to detect decision-making patterns or deviations from prior decision-making patterns and is not meant to replace or influence the</i></p>	<p>There are no similar risk-based exceptions in AIDA.</p> <p>There are no exceptions to the classes of use in Schedule 2 of AIDA as high-impact systems. Rather, each of the broad classes of use of AI (regardless of potential risk) is classified as a high-impact system, which can be varied or deleted by regulation (see below).</p>	<p>The scope of AI systems regulated under AIDA as high-impact is materially broader than “high-risk” AI systems under the AI Act.</p> <p>Compared to the AI Act’s targeted, risk-based approach to regulating AI, a far greater breadth of AI systems would be subject to AIDA’s statutory provisions.</p>	<p>Use of an AI system to sort employment applications into job categories based upon professional licensing or years of experience for subsequent human review.</p> <p>An AI system designed to perform this task will be regulated as a high-impact system under AIDA but will not be regulated as a high-risk system under the AI Act.</p>

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	<p><i>previously completed human assessment, without proper human review; or</i>  <i>(d) the AI system is intended to perform a preparatory task to an assessment relevant for the purpose of the use cases listed in Annex III.</i></p> <p>(Section 2a of Article 6)</p>			
<p>High-risk / High-impact AI systems</p> <p>Adding new classes of use</p>	<p>Additional uses of high-risk systems can be added to the AI Act via delegated acts only if the following preconditions are met:</p> <p>(a) the added use case must fall within one of the eight areas of use listed in Annex III; and</p> <p>(b) the added use case must pose a risk of harm to health and safety, or an adverse impact on fundamental rights, <i>and</i> that risk of harm or adverse impact must be equivalent to or greater than the risk of harm or of adverse impact posed by the high-risk AI systems already referred to in Annex III.</p> <p>(Article 7)</p>	<p>There are no preconditions to the Governor in Council adding, varying or deleting classes of high-impact systems through regulations.</p> <p>The Governor in Council will have to take into account four prescribed factors, but these “factors” are discretionary rather than preconditions.</p> <p>(Section 36.1(2))</p>	<p>The delta between systems regulated under AIDA as high-impact and systems regulated under the AI Act as high-risk may become wider over time (and without Parliamentary oversight).</p>	

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<p>General-purpose systems</p> <p>Underlying model</p>	<p>Under the AI Act, an AI system will be a “general-purpose AI system” only if it is based on a general-purpose AI (“GPAI”) model, that has the capability to serve a variety of purposes.</p> <p>(Section (44e) of Article 2)</p>	<p>Under AIDA, there is no requirement that a general-purpose system be based on (or otherwise related to) a GPAI model.</p> <p>AIDA defines a general-purpose system far more broadly as <u>any</u> AI system designed for use in many fields and for many purposes and activities.</p> <p>(Section 5(1))</p>	<p>The compliance requirements in AIDA applicable to general-purpose systems apply to a materially broader range of AI systems compared to the types of “general-purpose AI systems” under the AI Act.</p>	<p>An AI system designed to forecast weather (which can be used in many fields and activities – e.g., mobile apps, ag-tech, aviation scheduling, etc.) would likely be regulated in Canada as a general-purpose system, even if it incorporates a limited purpose machine learning model.</p>
<p>General-purpose systems</p> <p>Compliance requirements</p>	<p>Under the AI Act, the principal compliance requirements applicable to general-purpose AI systems are limited to:</p> <p>(a) Transparency vis-à-vis providers of high-risk AI systems;</p> <p>(b) Cooperation, technical access and other assistance vis-à-vis providers of high-risk AI systems; and</p> <p>(c) Identification of outputs as being AI-generated.</p> <p>(Article 28 and Article 52)</p>	<p>Under AIDA, a person who <u>makes available</u> a general-purpose system must comply with a broad range of compliance requirements (the details of which are to be prescribed in regulations).</p> <p>These requirements address:</p> <ul style="list-style-type: none"> <li>- Data use;</li> <li>- Impact assessments;</li> <li>- Risk mitigation;</li> <li>- Testing of mitigation measures;</li> </ul>	<p>The compliance requirements in AIDA applicable to general-purpose AI systems are materially broader than under the AI Act.</p>	<p>A provider of a general-purpose system in Canada (including a low-risk system, like a grammar checker), would need to comply with a broad range of requirements, including a third-party assessment.</p> <p>A business that fine-tunes a general-purpose system (including a low-risk system) would likely need to comply with a broad range of requirements,</p>

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		<ul style="list-style-type: none"> <li>- Human oversight;</li> <li>- Transparency;</li> <li>- Identification of output; and</li> <li>- Third party assessments.</li> </ul> <p>(Section 7(1))</p> <p>The person who <u>manages the operation</u> of a general-purpose system must ensure the requirements described above are met and comply with additional requirements (the details of which are to be prescribed in regulations).</p> <p>These requirements will address:</p> <ul style="list-style-type: none"> <li>- Impact assessments;</li> <li>- Risk mitigation;</li> <li>- Testing of mitigation measures;</li> <li>- Human oversight; and</li> <li>- Cessation of use (serious harm test).</li> </ul> <p>(Section 8.2(1))</p>		<p>including a third-party assessment.</p>

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Models  What is regulated	Under the AI Act, only <u>general-purpose AI models</u> are regulated.  (Article 52c)	Under AIDA, <u>all machine learning models</u> are regulated if made available for incorporation into a <u>high-impact system</u> .  (Sections 5(1) and 9(1))	The “model” rules in the AI Act and AIDA apply to different categories of models (which creates significant interoperability challenges for companies operating in Canada).  When the model rules in AIDA are read together with the rules applicable to general-purpose systems and high-impact AI systems, the compliance requirements in AIDA for models (regardless of risk associated with a given model) are materially broader than under the AI Act.	If a machine learning model for checking grammar is incorporated into a high-impact AI system, the provider will need to comply with a broad range of requirements, including the publication of a model card, even though the model itself is low risk.  The same model would not be regulated under the rules in the AI act applicable to general purpose AI models or high-risk AI systems.
Models  Compliance requirements	Under the AI Act, all general-purpose AI models must comply with requirements covering: <ul style="list-style-type: none"> <li>- Technical documentation;</li> <li>- Copyright; and</li> <li>- Transparency of content used for training.</li> </ul> (Article 52c)	Under AIDA, there is no distinction made between models based upon whether they create systemic risk or the risk of the model itself.  If a model (including a low-risk model) is incorporated into a high-impact AI system, the person making the model available must comply with a broad range of compliance requirements	The compliance requirements in AIDA applicable to models apply to a materially broader range of models than under the AI Act.	See the example immediately above regarding a grammar checker incorporated into a high-impact system.

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	<p>Additional compliance requirements apply to general-purpose AI models with <u>systemic risk</u>, defined as either: (i) having capabilities that exceed that of the most advanced general purpose AI models (such as a model trained on a certain compute power); or (ii) meeting criteria based on an evaluation and decision of the EU Commission.</p> <p>These additional requirements cover:</p> <ul style="list-style-type: none"> <li>- Notification;</li> <li>- Model evaluation, including adversarial testing;</li> <li>- Assessment and mitigation of systemic risks;</li> <li>- Serious incident reporting; and</li> <li>- Cybersecurity protection.</li> </ul> <p>(Article 52d)</p>	<p>(the details of which are to be prescribed in regulations).</p> <p>These requirements will address:</p> <ul style="list-style-type: none"> <li>- Data use;</li> <li>- Impact assessments;</li> <li>- Risk mitigation; and</li> <li>- Model cards.</li> </ul> <p>(Section 9)</p> <p>The requirements applicable to models are in addition to the requirements that apply to making available a high-impact AI system.</p> <p>(Section 5(2))</p>		



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Retrospective application	<p>Retrospective application of the AI Act to existing systems and models is limited to three specific scenarios:</p> <ol style="list-style-type: none"> <li>1. Large-scale IT projects governed by legislation;</li> <li>2. High-risk AI systems <u>if subject to significant changes in their designs</u>; and</li> <li>3. General-purpose AI models.</li> </ol> <p>(Article 83)</p>	<p>AIDA applies retrospectively to <u>all</u> existing systems and models (i.e., high-impact systems, general-purpose systems and machine learning models intended for use in a high-impact model).</p> <p>(Sections 7(3), 8(2) and 8.2(2))</p>	<p>Compared to the AI Act’s targeted, risk-based approach, AIDA will apply retrospectively to an unlimited and therefore far greater number of existing systems and models.</p>	<p>Continued use of an existing AI system deployed to sort employment applications into job categories based upon professional licensing or years of experience for subsequent human review will need to be assessed, tested, etc. even if it has been in use for years and has caused no harm or negative impacts.</p>
Third-party conformity assessments	<p>Under the AI Act, only high-risk AI systems intended to be used for biometrics are to be subject to third-party conformity assessments.</p> <p>(Recital 64 and Article 43)</p>	<p>AIDA requires that a third-party conformity assessment be performed in respect of <u>any</u> general-purpose system (regardless of how the system is used or level of risk associated with the system).</p> <p>(Section 7(1)(i))</p>	<p>The current shortage in Canada and globally of qualified third-party assessors will delay the making available of general-purpose systems.</p> <p>Third-party assessments of high-risk AI systems in Canada will be delayed due to the number of low-risk systems that need to be assessed.</p>	<p>A grammar checker will need to be subject to a third-party assessment under AIDA but not under the AI Act.</p>

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Proportionality	<p>Under the AI Act, proportionality is identified in the Recitals as an overarching objective and principle that informs interpretation and enforcement.</p> <p>(See, for example, Recitals 42, 60g, 70a and 74a)</p>	<p>Proportionality is not expressly referenced in AIDA.</p> <p>Only two provisions in AIDA (one governing accountability frameworks and the other enforcement) identify the nature of a business (or the nature and size of a business) as relevant considerations.</p> <p>(Sections 12(5) and 33(3))</p>	<p>AIDA requires strict compliance, whereas compliance with the requirements under the AI Act is subject to an overarching principle of proportionality.</p>	
Offences	<p>Penalties under the AI Act are limited to administrative fines.</p> <p>(Article 71)</p>	<p>AIDA makes any non-compliance a regulatory offence and creates new “full” criminal offences with penalties that include imprisonment.</p> <p>AIDA also provides for administrative monetary penalties to be set out in future regulations.</p> <p>(Sections 29, 30, 38 and 39)</p>	<p>Compared to the AI Act, there is more legal risk under the enforcement regime in AIDA.</p> <p>When deciding on whether to develop, distribute or adopt AI tools and products in Canada, businesses will need to weigh the risk of being prosecuted if they do not strictly comply with each compliance requirement in AIDA (including requirements that are not applicable under the AI Act).</p>	

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			This risk consideration may result in certain companies, particularly small and medium-sized businesses, mitigating or eliminating their compliance risks by electing against developing, distributing or adopting AI systems in Canada.	