

Draft Commission guidelines on the classification of high-risk AI systems under Article 6 of the AI Act

CurrENT's Consultation Response

***On which part(s) of the draft Guidelines would like to comment?** *Multiple answers are possible. Please note that selecting a particular answer will direct you to a set of questions specifically related to subject specified.*

- ☐ General principles for classification of high-risk AI systems under Article 6. (Section II)
- ☒ High-risk classification according to Article 6(1) – Annex I. (Section III)
- ☒ High-risk classification according to Article 6(2) – Annex III. (Section IV)
- ☐ Questions in relation to Article 112 paragraph 1 (Evaluation and Review)

High-risk classification according to Article 6(1) – Annex I (Section III of the draft Guidelines)

Q1) Select the relevant subsection(s):

- ☐ III.1 The rationale
- ☒ III.2 Main elements for classification as high-risk

Q2) Select the relevant subsection(s):

- ☐ III.2.1 Component of a product or itself a product
- ☒ III.2.2 Safety Component
- ☐ III.2.3 Third-party conformity assessment

III.2.2 Safety Component

Question A. Are there any aspects / sections / paragraphs of this Section of the draft Guidelines that you believe require further clarification, and if so, how would you suggest they be improved to ensure effective implementation and compliance?

- ☒ Yes
- ☐ No
- ☐ N/A

Please specify:

Related to paragraph 42: The Guidelines should make clear that a tool isn't automatically a safety component just because it's used in a safety-relevant sector. What matters is whether the AI itself directly performs the safety function, not whether it helps, informs, or supports the people who do.

Related to paragraph 35: The intended purpose should be assessed against the two-part test in Article 3(14) and the provider's stated purpose, not inferred from a system's technical capacity to influence downstream decisions.

High-risk classification according to Article 6(2) – Annex III (Section IV of the draft Guidelines)

Q1) Select the relevant subsection(s):

- IV.1. Rationale and approach
- IV.2 Horizontal issues applicable to Annex III use case
- IV.3 High-risk AI systems in the areas of Annex III

IV.3 High-risk AI systems in the areas of Annex III

Q2) Please select the sector(s) you wish to comment on. *Multiple answers are possible*

- 3.1 Biometrics
- 3.2 Critical infrastructure
- 3.3 Education and vocational training
- 3.4 Employment, workers' management and access to self-employment
- 3.5 Access to and enjoyment of essential private services and essential public services and benefits
- 3.6 Law enforcement
- 3.7 Migration, asylum and border control management
- 3.8 Administration of justice and democratic processes

3.2. Critical Infrastructure

Question A. Are there any aspects / sections / paragraphs of this Section of the draft Guidelines that you believe require further clarification, and if so, how would you suggest they be improved to ensure effective implementation and compliance?

- ☒ Yes
- ☐ No
- ☐ N/A

Please specify:

Related to paragraphs 180-186: the Guidelines should preserve their proportionate scope. Tools that improve reliability, efficiency, capacity management or forecasting should remain outside high-risk classification where they do not themselves perform the safety function, in line with the exclusion for supportive, informational and optimisation functions already reflected in the draft Guidelines.

Question B. Do you think there are additional examples or use-cases , relevant for this Section of the draft Guidelines, that you find important that the Guidelines include or exclude from the scope of high-risk classification, taking into account the legal provisions in the AI Act?

- ☒ Yes
- ☐ No
- ☐ N/A

If so:

- a) please explain why do you think they should be treated as such and
- b) if your suggested example(s) or use case(s) are to be considered as in or out of scope

Response: We suggest including an additional use case in Section 3.2.7 on real-time Dynamic Congestion Management (DCM) systems, an increasingly deployed technology used in the management and operation of electricity networks.

A DCM system increases the usable firm transfer capacity of existing transmission or distribution assets, reducing renewable curtailment or creating headroom for new generation and large-load interconnections (e.g. data centres), without building new physical infrastructure. To do so, it maintains a live model of the network represented in a digital twin, continuously evaluates the real-time operating state and the consequences of credible contingencies, and computes the response that would keep the network within its technical limits should a contingency occur. When a validated event is detected, it coordinates controllable resources, for example by adjusting generation set points or, where appropriate, regulating loads; so that post contingency

flows remain within approved thermal, voltage and stability limits, before releasing the restriction once the system is secure again.

Why classification is unclear. The system has a dual character. Its principal purpose is operational and economic: making better use of existing infrastructure while reducing curtailment and increasing available network capacity. At the same time, it continuously assesses network conditions and can take automatic corrective action within a predefined operating envelope. Three design characteristics are particularly relevant:

- 1) it operates strictly within topologies, contingencies, limits and response times defined through engineering studies and approved by the system operator, and cannot widen or override that envelope;
- 2) on any communication failure, measurement failure or out-of-envelope condition, it reverts the network to a previously validated safe configuration and disarms;
- 3) it does not replace primary electrical protection, which remains fully independent and is always the last line of defense for the physical integrity of the network.

We therefore ask the Commission to clarify, through this use case, how such systems should be assessed under Article 6(2) and Annex III, point 2. In particular, whether classification should consider the system as a whole or its individual functions, and how factors such as operator-approved operating limits, fail-safe design, and independent protection should influence the assessment.