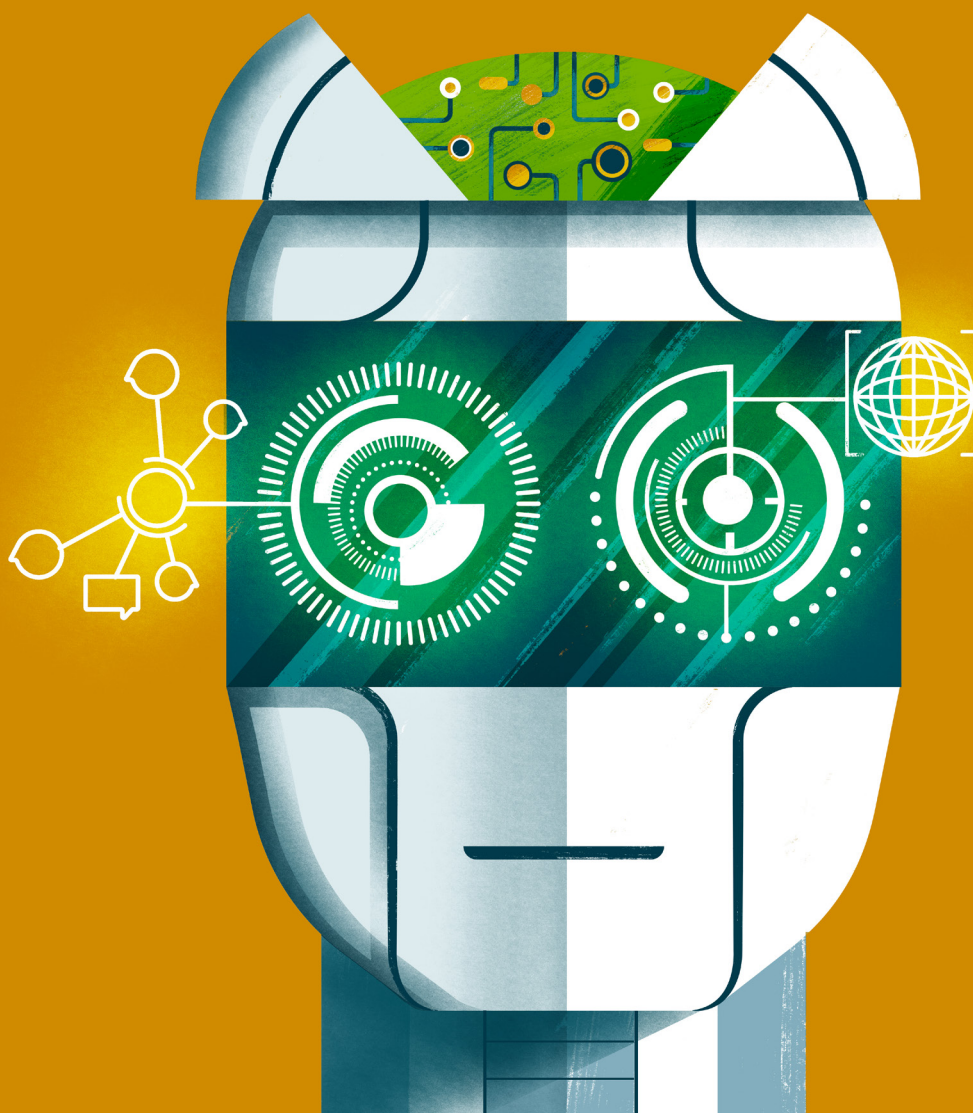
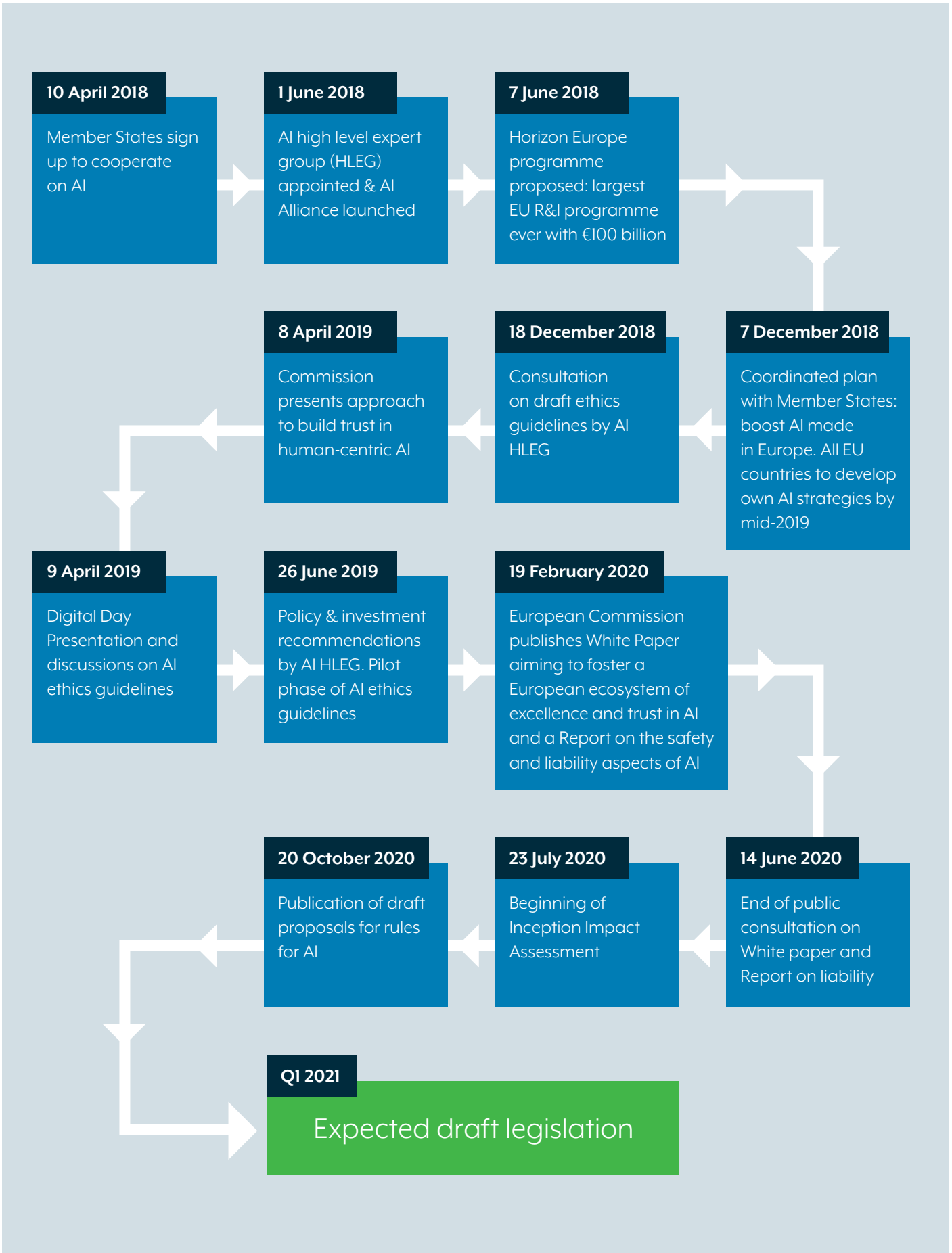


AI Overview

October 2020



Timeline to date of Development of EU AI Laws



Scope of Application

Developers, deployers and some users will be subject to the new obligations for operating high risk AI. This is a significant change to existing law which focuses responsibility on manufacturers. This change is proposed to reflect the complexity of an AI supply chain and will be welcomed by developers and manufacturers.

Broad Scope of regulated technology

Each of ‘artificial intelligence’, ‘robotics’ and ‘related technologies’ are given specific meanings under the proposals and summarised as follows: artificial intelligence – AI software/hardware systems; robotics – physical machines with AI capability; and related technologies – other technologies such as those capable of detecting biometric, genetic or other data. Use of any of these in products will be regulated in specific high risk sectors and for specific high risk uses.

Nature and type of Obligations regarding high risk AI

Apart from expected obligations regarding human oversight, bias, discrimination, explainability and security there are other potentially very challenging obligations for those developing, deploying and using high risk AI, including in relation to the dissemination of disinformation, and environmental sustainability.

Compensation & limitation periods for high-risk AI systems

Maximum compensation of €2 million payable in case of death or harm to a person’s physical health or integrity resulting from an operation of a high-risk AI-system. Also a maximum of €1 million in the case of significant immaterial harm such as economic loss or damage to property. Limitation periods could allow claims to be brought up to 30 years after the event which is potentially very challenging for developers and deployers.

Scope of redress

Individuals and corporations shall have the right to seek redress for injury or harm caused by the development, deployment and use of high-risk AI. The scope of harm includes physical or mental injury and material or immaterial harm such as financial or economic loss.

Headline Points of Proposed AI and Liability Laws

Strict Liability

Proposal for a regime of strict liability for operators of high-risk AI systems, so that they will be strictly liable for any harm or damage that was caused by a physical or virtual activity, device or process driven by that AI system even if they did not act negligently.

Proposal to expand concept of “time when the product was put into circulation”

EU will consider whether the responsibility and liability of a producer of AI could go beyond this well established liability principle, taking into account that AI-driven products may be changed or altered under the producer’s control after they have been placed on the market, which could cause a defect and ensuing damage. This could be a welcome change for operators.

High Risk sectors

The initial defined scope of designated high risk sectors is far broader than expected from the White paper. It includes employment, education, healthcare, transport, energy, public sector (asylum, migration, border controls, judiciary and social security services), defence and security, and the finance, banking and insurance sectors.

Joint and several Liability

Where there is more than one operator, for example a backend and frontend operator, all operators should be responsible to the user for harm and loss both individually and together. Operators will be able to pursue each other for the share of the harm and loss caused by the other.

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