

Labour rights & the digital transition  
ETUI/ELW event on 28 October 2021

# PREVENTING NON- DISCRIMINATION IN ALGORITHMIC DECISION-MAKING

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software can have an *impact* on future *career prospects* and the livelihoods of persons

**WHAT IS THE ROLE OF  
NON-DISCRIMINATION  
LAW?**

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# OVERVIEW

1



AUTOMATING RECRUITMENT  
AND SELECTION PROCESSES

2



RISKS

3

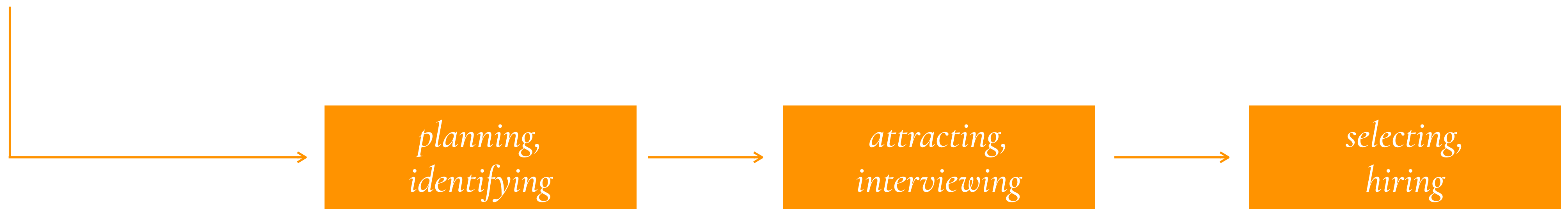


REGULATORY CHALLENGES

# 1 AUTOMATING RECRUITMENT AND SELECTION PROCESSES



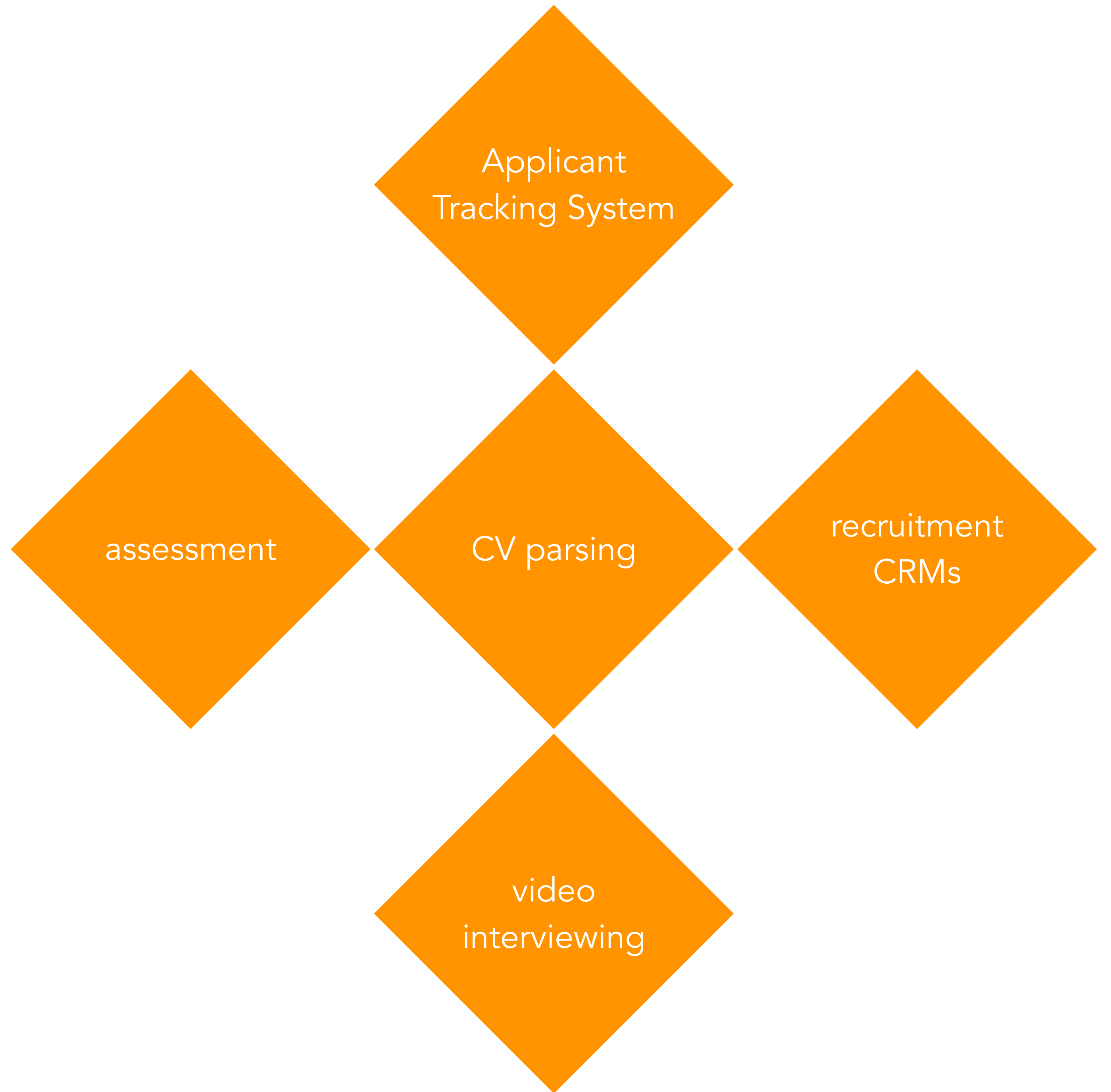
phases of the  
recruitment process



RECRUITMENT  
SOFTWARE  
LANDSCAPE



*solutions for different **problems***



2 RISKS



*promise:*

increased efficiency, higher accuracy and speed



**MAIN SOURCES OF BIASED OR DISCRIMINATORY OUTCOMES**



*quality of training data*

*system design*

*complex interactions*

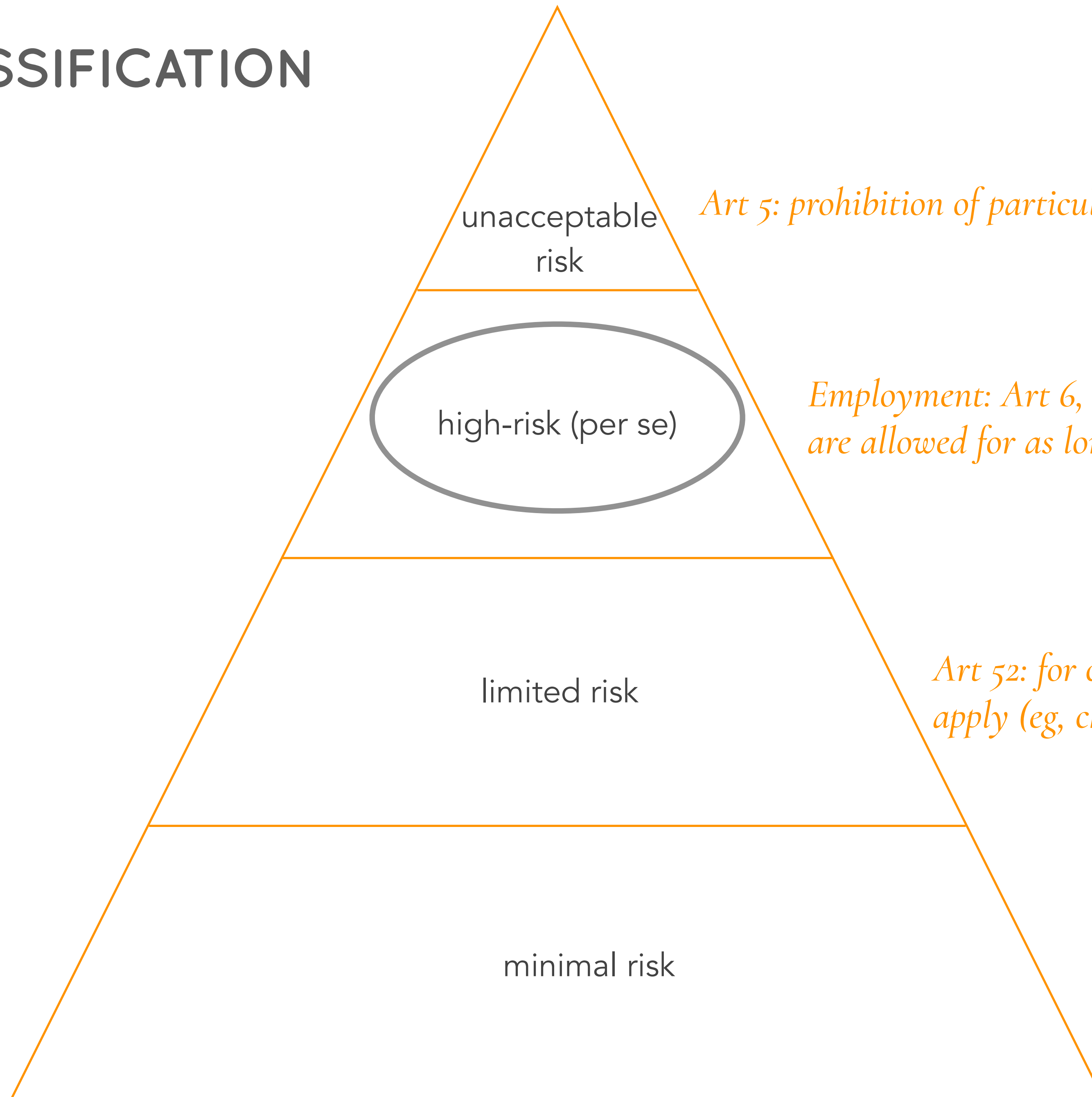


## COM (2021) 206 FINAL

European Commission proposal of 21 April 2021 on a 'Regulation Laying Down Harmonised Rules on Artificial Intelligence'

- »»→ *primary aim: proper functioning of internal market*
- »»→ *harmonising rules on the development, placing on the Union market and the use of products and services making use of AI technologies or stand-alone AI systems*

# RISK CLASSIFICATION



unacceptable  
risk

*Art 5: prohibition of particular AI systems*

high-risk (per se)

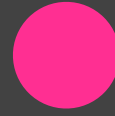
*Employment: Art 6, with reference to Annex III: AI systems that are allowed for as long as certain requirements are met*

limited risk

*Art 52: for certain AI systems transparency obligations apply (eg, chatbots)*

minimal risk

### 3 REGULATORY CHALLENGES



*profiling:*

abstract nature &  
drawing of inferences



**TO WHAT EXTENT DO (A COMBINATION OF DIFFERENT)  
ATTRIBUTES BELONG TO THE PROTECTED GROUNDS?**



*not all biased decisions are discriminatory within a legal sense*

CHALLENGES IN THE CONTEXT  
OF NON-DISCRIMINATION LAW



*data of other job  
applicants*

*personal data and  
identifying individuals*

*proxy discrimination*

# AI ACT: REQUIREMENTS HIGH-RISK SYSTEMS

*provider*, ie company developing recruiting software (Art 16):

- ▶ requirements set out in Art 8-15
- ▶ quality management system (Art 17)
- ▶ technical documentation
- ▶ automatically keeping logs
- ▶ assessment procedure, prior to its placing on the market or putting into service
- ▶ registration (Art 51, 60)
- ▶ corrective actions if not in conformity with Art 8-15

*user*, ie any natural or legal person, public authority, agency or other body using an AI system under its authority (Art 29):

- ▶ use high-risk AI systems in accordance with provider's instructions
- ▶ ensure that input data is relevant in view of purpose of high-risk AI system
- ▶ monitor operation of system on basis of instructions
- ▶ keep the logs automatically generated
- ▶ use information provided under Art 13 to comply with obligation to carry out data protection impact assessment under Art 35 GDPR



THANK YOU