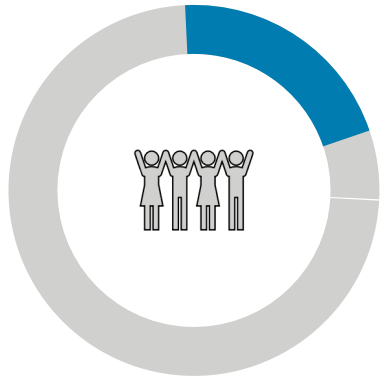# Deloitte.

GenAI - od myšlenky k akci právní aspekty nasazení GenAI ve firmách
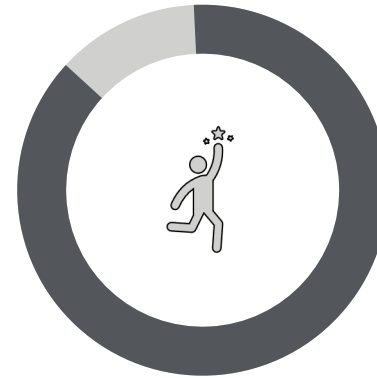
23 October 2023, Katarína Grujbárová, Jan Hejtmánek

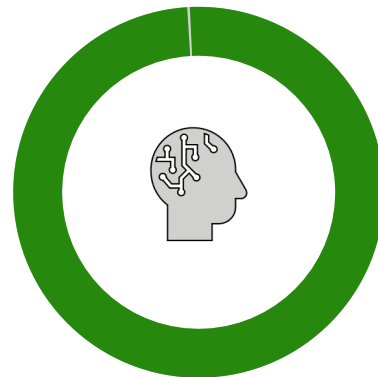# Introductory statistics

~20%
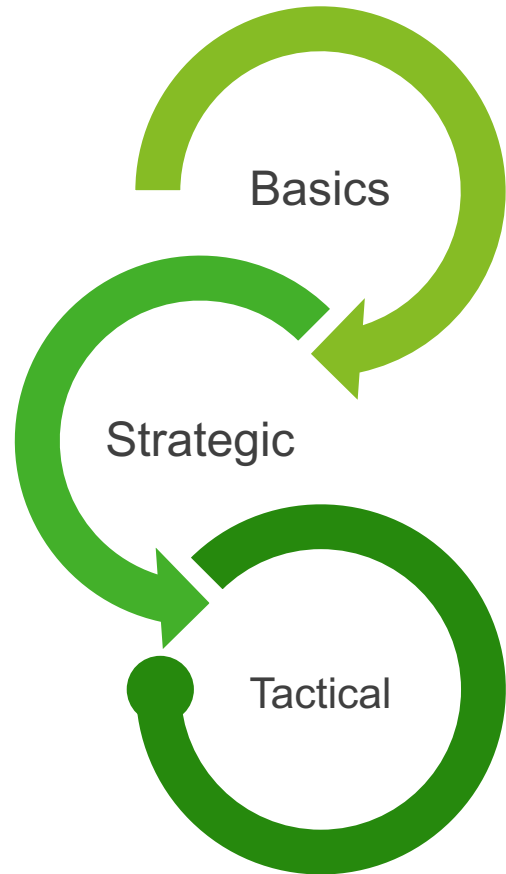of general population are actively <u>using GenAI</u> today.

>90%
of <u>leaders find AI critical</u> for success (Deloitte, EY, PWC, McK studies

100%
<u>IT people have exposure</u> to genAI

Gen AI Usage

Basics

Strategic

Tactical

GenAI is a catalyst for business transformation. Legal, compliance and ethics need to be solved.

Core systems will be embedded with GenAI. Companies need to make strategical choices to take advantage of the new features.

Companies should automate the business processes outside of the core systems fast with quick gains and ready-made accelerators.

Deloitte GenAI Dossier

Check out our Dossier that contains a huge list of use cases.

We have over 500 use cases in our books, and the number is growing.

1

Intersection of AI and Law

2

EU regulatory framework

3

EU AI ACT
General overview

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EU AI ACT
Classification of systems

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EU AI ACT
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Existing laws
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Insights driven organization

Intersections of AI and law

Data inputs

Data processing

Data outputs

Data ownership – trade secrets, licenses, personal data

Access – availability of dataset

Content – accuracy and quality

Explainability – particular outcome, inner working, post decision

Fundamental rights - discrimination

Ownership and IP – rights to the output, permitted use

Liability – civil/criminal

Other Prohibited Practices elimination – unfair commercial practices, price fixing, collusion, etc.

EU Regulatory Framework

A I   S p e c i f i c

EU AI ACT

AI liability Directive

Product Liability Directive
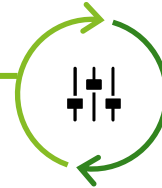
E x i s t i n g

Charter of FHR

GDPR

IP Directives

Competition law (TFEU)

Consumer law directives

EU AI ACT

General overview

REGULATION

Directly applicable in all EU member states without local transposition

AI DEFINITION

System developed based listed techniques (supervised/unsupervised learning, artificial neural networks, NLP, etc.) able to take actions otherwise requiring human (decisions, predictions, or recommendations

PRINCIPLES & SCOPE

Proportionality, risk- based approach – prohibited systems/systems with stricter governance

All systems – DEVELOPED, PLACED, PUT INTO SERVICE in EU

EFFECTIVENESS

EU PARLIAMENT approved the wording on 14 June 2023, trialogue ongoing

Effectiveness is expected as of the 01 January 2024 (after trialogue) + 2 years grace period

IMPLICATIONS

Penalty of up to 7% of Global Group Turnover for non-compliance

EU AI ACT
AI SYSTEMS CATEGORIZATION – INTENDED PURPOSE

UNACCEPTABLE RISK
PROHIBITED

MANIPULATIVE AND EXPLORATIVE AI

- subliminal techniques beyond consciousness, manipulation of behavior, exploitation of vulnerabilities

SOCIAL SCORING OF CITIZENS

- Assessment and classification of trustworthiness of citizens

REMOTE BIOMETRIC IDENTIFICATION IN PUBLIC SPACES

- Monitoring of citizens in public spaces (also for law enforcement)

HIGH-RISK
REGULATED

- Safety components (cars, toys or similar) and/or fundamental rights implications, including posing harm to health, safety

Mainly:

- Healthcare (diagnostics, emergency first responses)

- Critical infrastructure (utilities supplies)

- HR (filtering applications, evaluation of candidates)

- Creditworthiness scoring, eligibility for benefits

- Justice administration, immigration
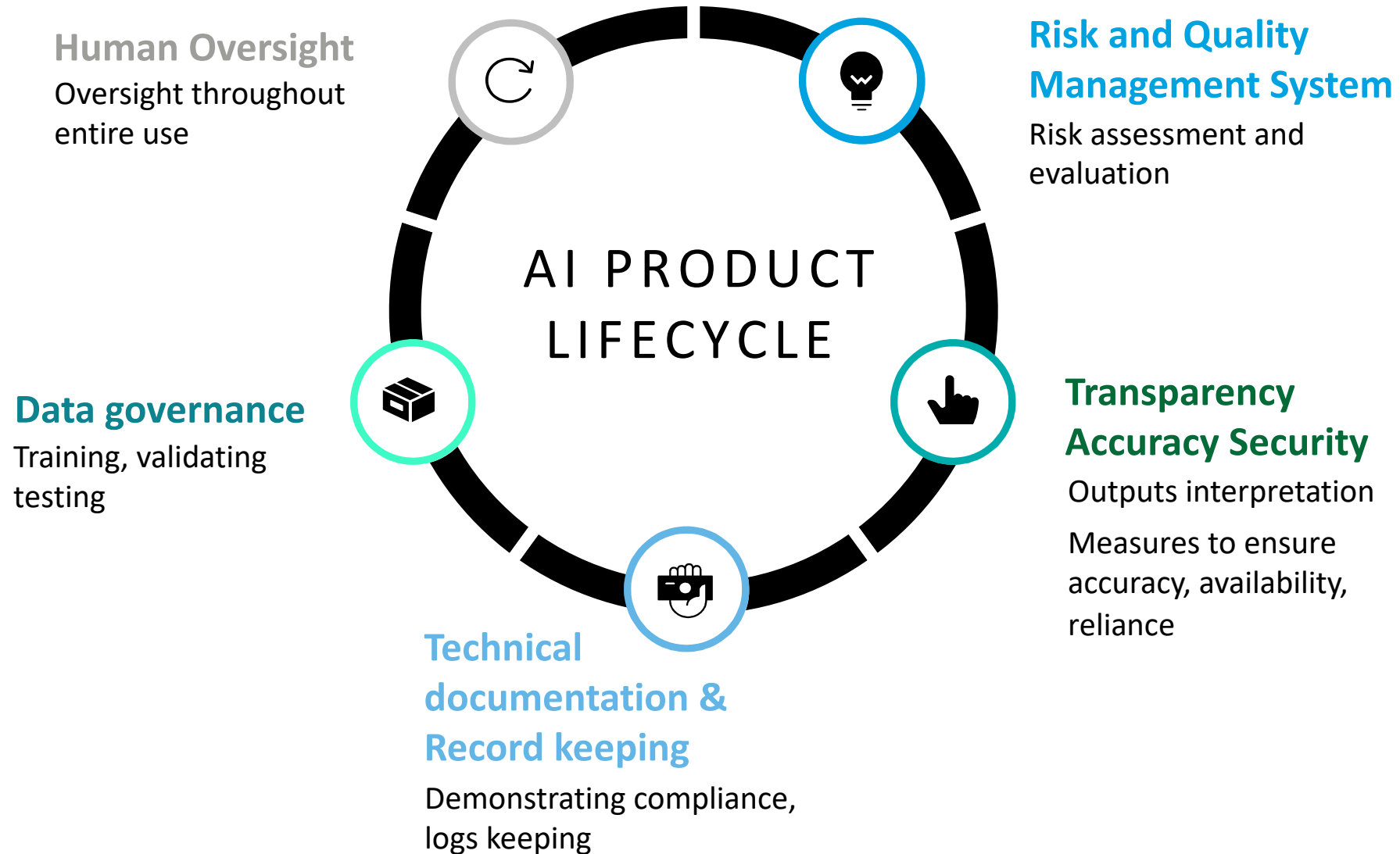
List to be maintained by EC

NON-HIGH RISK
VOLUNTARY COMPLIACE

- some of the transparency requirements may be required (e.g. use of chatbots)

- On voluntary basis – the same set of requirements as for high-risk

> **!** Foundational model providers will be subject to additional transparency requirements (registration, content origin, prevention of illegal content, etc.)

AI Governance lifecycle

Human Oversight
Oversight throughout entire use

Risk and Quality Management System
Risk assessment and evaluation

Data governance
Training, validating testing

AI PRODUCT LIFECYCLE

Transparency Accuracy Security
Outputs interpretation

Measures to ensure accuracy, availability, reliance

Technical documentation & Record keeping
Demonstrating compliance, logs keeping

Liability Directives

AI Liability Directive

> **!** **Liability of ANY PERSON for fault influencing AI system that caused damage**

- „EXTRA-contractual" civil liability – compensation irrespective of contract with victim

- Damage caused by AI systems (irrespective whether High risk), i.e. outputs or failure to produce outputs

- Disclosure of evidence – court mandated access to AI System documentation

- Burden of proof - damage is presumed to be caused when system is non-compliant with EU AI ACT or court believes it is excessively difficult for claimant to prove causal link

Product Liability Directive

> **!** **MANUFACTURERS/IMPORTERS**

- Liability for software including AI system placed on the market in EU

- Disclosure of evidence – court mandated access to documentation available in connection to the product

- Burden of Proof – damage is presumed to be caused by product if (i) relevant documentation was not disclosed, (ii) the product is non-compliant with EU mandatory safety requirements or (iii) obvious malfunction of the product

EXISTING LAWS

What is their impact?

COPYRIGHTS

How copyrights affect AI?

- Exploitation of copyrighted content is subject to license – author granted or public (e.g. data mining).
- No ´FAIR USE´ concept in EU

Is the output copyright protected?

- author/inventor is natural person only
- „human creativity" element required

CONFIDENTIALITY

Why is confidentiality relevant?

- Protected information – laws/contracts
- Trade secret protection

Dissemination or re-use of privileged information may result in regulatory fines, contractual penalties and loss of trade secret protection
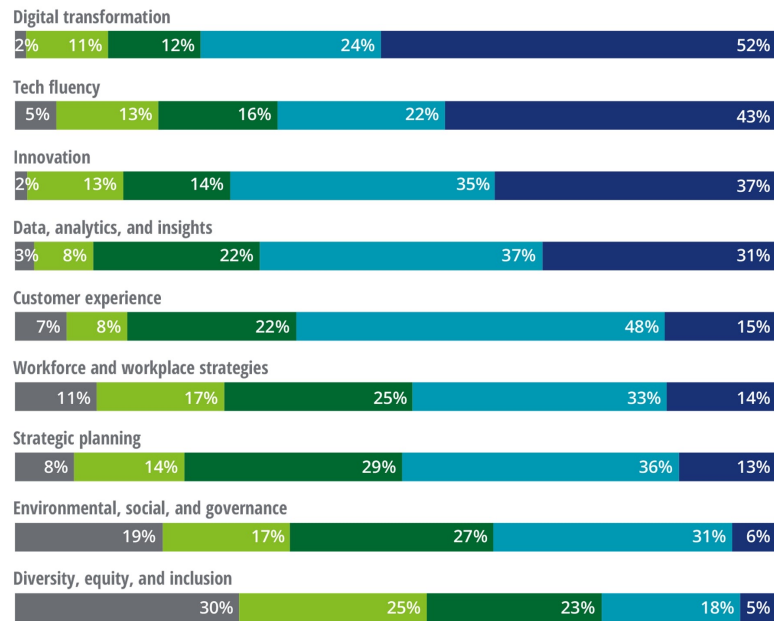
DATA PROTECTION

How GDPR affects Gen AI ?

- GDPR applies irrespective of the technology used for data processing
- Controller/processor roles must be assigned
- Data Minimization principle
- Transparency & Explainability (automated decision making),
- Lawfulness (basis for processing)
- Data Subject rights enforcement throughout the entire lifecycle.

Role of CIO

Tech leaders are now expected to drive organization-wide initiatives ranging from tech fluency to ESG

Question: What is the technology function's role in driving the following organization-wide initiatives?

Legend: ■ No role ■ Only within IT ■ Provides data ■ Provides tools and analysis ■ Tech function owns and drives

Digital transformation
2% | 11% | 12% | 24% | 52%

Tech fluency
5% | 13% | 16% | 22% | 43%

Innovation
2% | 13% | 14% | 35% | 37%

Data, analytics, and insights
3% | 8% | 22% | 37% | 31%

Customer experience
7% | 8% | 22% | 48% | 15%

Workforce and workplace strategies
11% | 17% | 25% | 33% | 14%

Strategic planning
8% | 14% | 29% | 36% | 13%

Environmental, social, and governance
19% | 17% | 27% | 31% | 6%

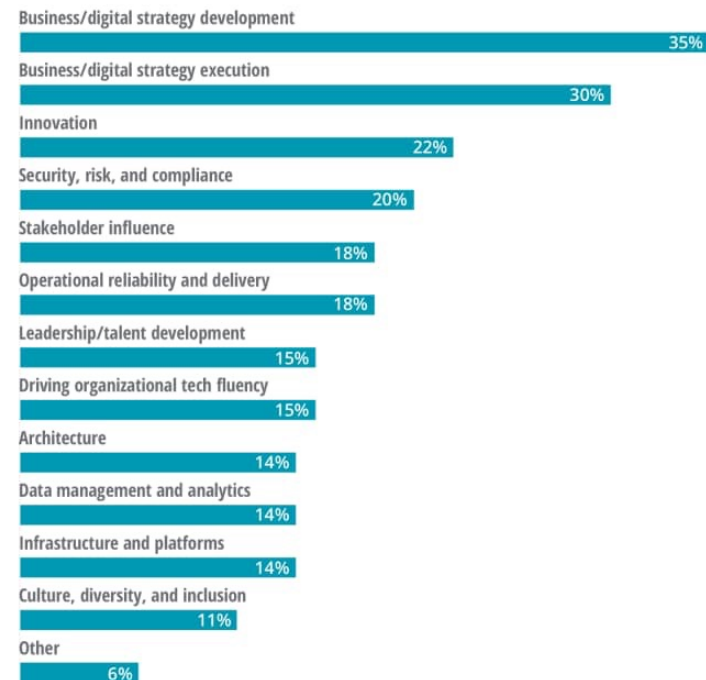**Diversity, equity, and inclusion**
30% | 25% | 23% | 18% | 5%

Note: N=1,176.
Source: Deloitte 2023 Global Technology Leadership Study.

Deloitte Insights | deloitte.com/insights

Tech leaders' focus areas indicate a multimodal role with a dual mandate of accelerating growth while ensuring operational excellence

Question: Please rank the top five areas where you currently spend the majority of your time, effort, and energy.

- Business/digital strategy development — 35%
- Business/digital strategy execution — 30%
- Innovation — 22%
- Security, risk, and compliance — 20%
- Stakeholder influence — 18%
- Operational reliability and delivery — 18%
- Leadership/talent development — 15%
- Driving organizational tech fluency — 15%
- Architecture — 14%
- Data management and analytics — 14%
- Infrastructure and platforms — 14%
- Culture, diversity, and inclusion — 11%
- Other — 6%

Note: Respondents' top response has been shown; N=1,179.
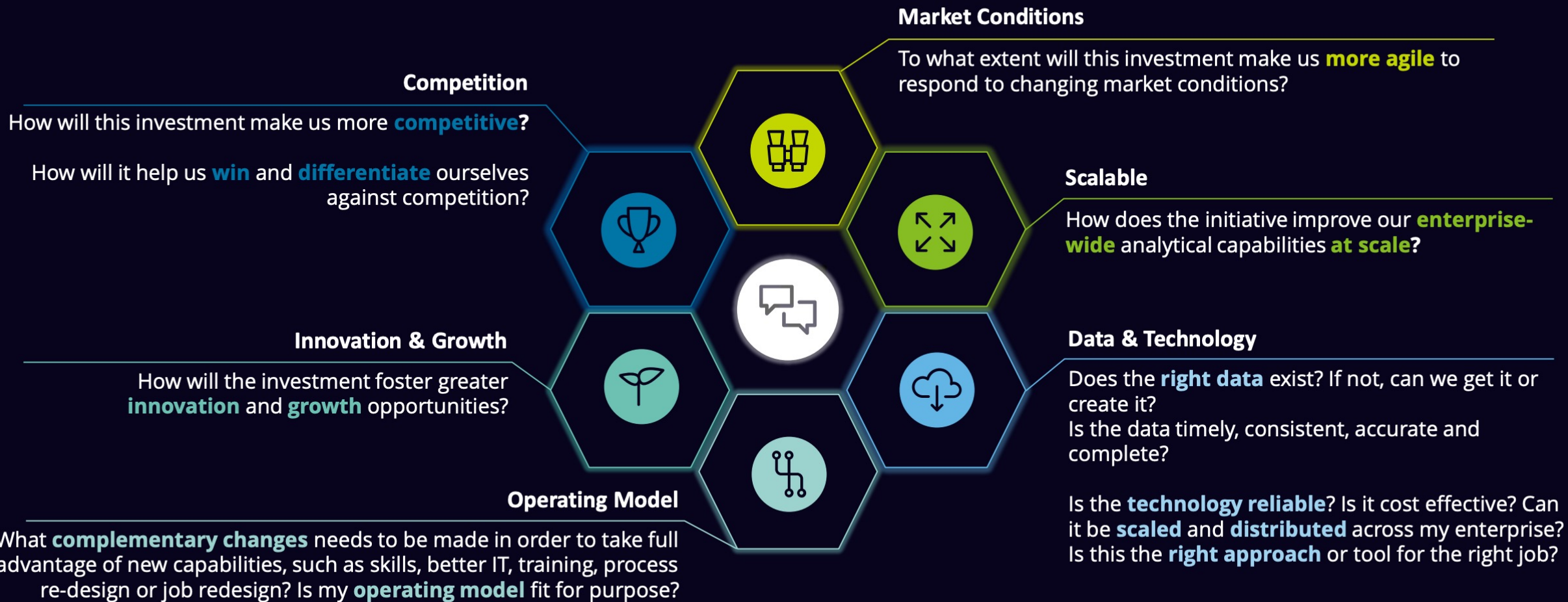Source: Deloitte 2023 Global Technology Leadership Study.

Deloitte Insights | deloitte.com/insights

Deloitte Global CIO and technology leadership survey collection

Check out our 2023 CIO survey of over 1000 global companies.

Insights driven organization

Competition

How will this investment make us more **competitive**?

How will it help us **win** and **differentiate** ourselves against competition?

Market Conditions

To what extent will this investment make us **more agile** to respond to changing market conditions?

Scalable

How does the initiative improve our **enterprise-wide** analytical capabilities **at scale**?

Innovation & Growth

How will the investment foster greater **innovation** and **growth** opportunities?

Data & Technology

Does the **right data** exist? If not, can we get it or create it?
Is the data timely, consistent, accurate and complete?

Is the **technology reliable**? Is it cost effective? Can it be **scaled** and **distributed** across my enterprise?
Is this the **right approach** or tool for the right job?

Operating Model

What **complementary changes** needs to be made in order to take full advantage of new capabilities, such as skills, better IT, training, process re-design or job redesign? Is my **operating model** fit for purpose?

Katarína Grujbárová   **Jan Hejtmánek**

Director,   Partner,
Deloitte Legal   AI & Data

Deloitte CE   **Deloitte CE consulting innovation leader**

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