

AI Act

The AI Act, which has entered into force on 1 August 2024, with most rules applicable by 2 August 2026, marks a new era in AI regulation within the EU. This landmark legislation establishes a comprehensive framework designed to ensure that AI systems are safe, transparent and respectful of fundamental rights.

Scope



The AI Act applies to providers, deployers and other participants in the AI value chain, such as importers and distributors, when AI systems are placed on or used in the EU market. This includes situations where the output of an AI system is used in the EU or where individuals affected by an AI system are located in the EU, regardless of the location of the participants.

General-purpose AI (GPAI)



The AI Act also imposes specific requirements for the provision of GPAIs. GPAIs are AI systems that serve as versatile models, capable of being adapted for various applications, such as language processing for chatbots and translation services, image recognition for medical diagnostics and autonomous vehicles, and predictive analytics for financial forecasting and personalised marketing. All providers of GPAIs must comply with transparency obligations, including the provision of technical documentation and details about training data. Providers of 'systemic risk' GPAIs face additional requirements, such as implementing cybersecurity measures and reporting on energy efficiency and serious incidents.

What is an AI system?



An AI system is a machine-based system that, for explicit or implicit purposes, infers from the input it receives how to generate output such as predictions, content, recommendations or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptability once deployed. For example, AI agents can independently make decisions and carry out tasks on behalf of a user or another system.

Note: Several key definitions in the AI Act, such as 'AI system', are both new and broad. Their precise scope will necessitate further clarification over time.

Generative AI (GenAI)

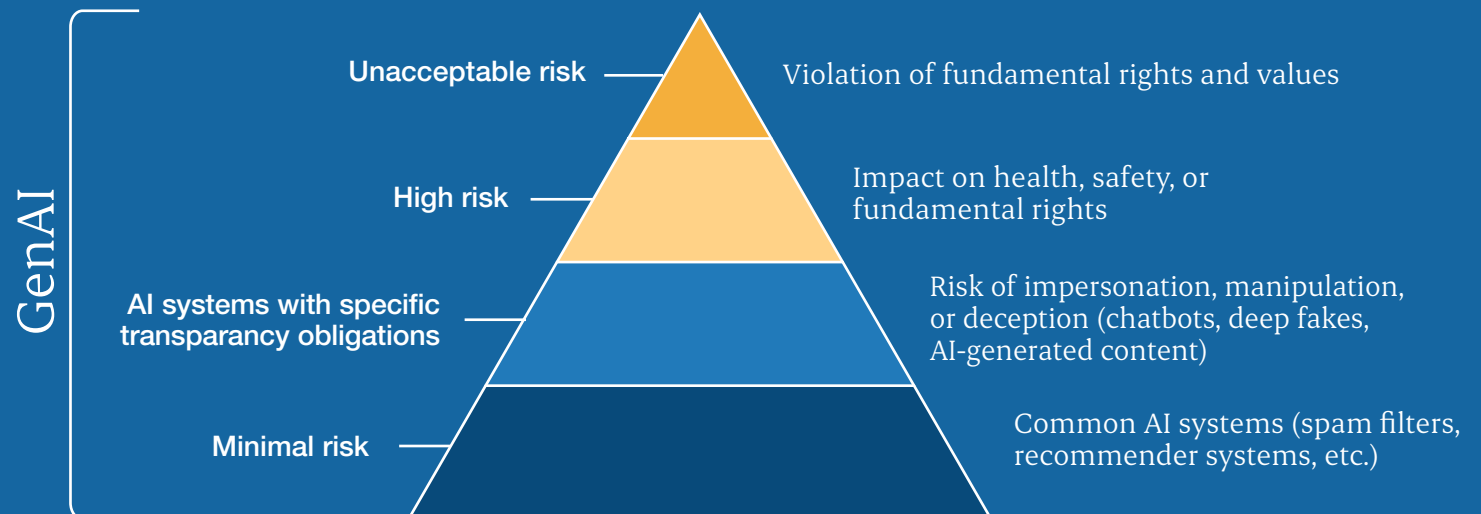


A subset of GPAI is Generative AI, which focuses specifically on creating new content, such as text, images or music based on its training data. The AI Act introduces additional requirements for this subset, including the disclosure of AI-generated content and copyrighted material used in training datasets, as well as designing the model so as to prevent generation of illegal content.

Risk classifications of AI systems

The AI Act sets out obligations for providers and deployers depending on the level of risk posed by AI, classifying AI systems into minimal risk, specific transparency risk, high-risk, and unacceptable risk categories.

Minimal risk AI is not subject to specific regulation. The AI Act introduces specific transparency obligations to ensure that users are informed when interacting with AI. High-risk AI must meet strict standards, including fundamental rights impact assessments and cybersecurity measures, while unacceptable risk AI is prohibited.



Enforcement



The AI Act relies on a two-tier enforcement mechanism:

- **EU level** - The European Commission plays a central role through the newly established AI Office, which coordinates policy at EU level and supports the development and use of trustworthy AI, while protecting against AI risks.
- **National level** - Each member state must designate at least one notification authority and one market surveillance authority as national competent authorities for the AI Act. Since early 2023, the Dutch Data Protection Authority (DDPA) coordinates AI and algorithm supervision. It is still uncertain if it will be designated under the AI Act.

Penalties



The AI Act allows for fines based on a percentage of the global annual turnover or a fixed amount, whichever is higher, with penalties ranging from EUR 7.5 million or 1.5% to EUR 35 million or 7%, depending on the infringement and company size. Proportional caps on fines for small and medium-sized enterprises (SMEs) and start-ups are included to avoid stifling innovation and to ensure a balanced governance framework.

Important dates

1 August 2024

Entry into force: At this stage, none of the AI Act's rules apply. They will begin to apply gradually over time.

2 August 2025

Application: The following rules start to apply: Notified bodies (Chapter III, Section 4), GPAL models (Chapter V), Governance (Chapter VII), Confidentiality (Article 78), and Penalties (Articles 99 and 100).

Providers: Providers of GPAL models that have been placed on the market / put into service before this date (pre-existing GPAL models) need to be compliant with the AI Act by 2 August 2027.

Member states: Deadline for member states to designate national competent authorities and to lay down rules for penalties and fines.

2 February 2027

Application: Obligations for (i) high-risk AI systems not listed in Annex III but intended as safety components of a product, and (ii) AI products requiring third-party conformity assessment under existing EU legislation, start to apply.

Providers: Providers of GPAL models placed on the market before 2 August 2025 (pre-existing GPAL models) must comply with the AI Act.

31 December 2030

Large-scale IT Systems: AI systems which are components of large-scale IT systems (Annex X) and that were placed on the market or put into service before 2 August 2027 must comply with the AI Act.

2 February 2025

Application: General provisions (Chapter I, including AI literacy requirements) and prohibitions on unacceptable risk AI systems (Chapter II) start to apply.

2 February 2026

European Commission: Deadline for the European Commission to provide guidelines specifying the practical implementation of classification rules for high-risk AI systems (Article 6), including a post-market monitoring plan.

2 August 2026

Application: The remainder of the AI Act starts to apply, except obligations for (i) high-risk AI systems not listed in Annex III but intended as safety components of a product, and (ii) AI products requiring third-party conformity assessment under existing EU legislation.

Member states: Shall ensure that their national competent authorities have established at least one AI regulatory sandbox at national level.

2 August 2030

Providers & deployers: Providers and deployers of high-risk AI systems intended to be used by public authorities must comply with the AI Act.

What this means for you

A comprehensive AI governance framework is essential to manage and mitigate the risks associated with AI. The following steps should be considered to ensure effective governance:

1 Mapping - Create a detailed overview of all AI systems within the organisation, including internal and third-party tools. Evaluate associated risks (ethical, legal, operational) and identify relevant stakeholders to understand their interests and concerns regarding AI.

2 Policy development and governance - Assign responsibilities and establish rules and guidelines for the use of AI within the organisation. This includes ethical guidelines to ensure transparency and accountability, data protection policies to safeguard data integrity and confidentiality, compliance with relevant laws and technical standards to ensure safe and ethical AI operations, and AI literacy. Governance over the use of AI is crucial to maintain trust, mitigate risks, and ensure responsible innovation.

3 Communication - Ensure employee AI literacy and awareness of AI policies through training sessions and updates. Communicate these policies to external stakeholders, such as customers and regulators, to build trust and mitigate reputational risk.

4 Compliance - Ensure that all AI systems comply with established policies through regular audits. Integrate compliance into daily operations with staff training and control mechanisms and conduct regular assessments to verify ongoing compliance and identify emerging risks.

Contact

Our Technology group helps clients understand how AI legislation will affect them and offers tailored strategic advice.



Joris Willems | partner
T. +31 6 52 05 03 90
E. joris.willems@nautadutilh.com



Vincent Wellens | partner
T. +352 621 15 61 78
E. vincent.wellens@nautadutilh.com