

A BDO Legal Guide to the

AI Act



It has finally happened!

The AI Act was published in the Official Journal of the European Union.

1 WHY DO WE NEED THE AI ACT AND WHAT DOES IT DO?

The AI Act ensures that Europeans can trust what AI offers while supporting innovation and limiting restrictions on development. While most AI systems pose limited to no risk and can contribute to solving many societal challenges, certain AI systems create risks that we must address to avoid undesirable outcomes.

The Act divides AI systems into categories depending on their risk level. Developers and deployers of AI systems in higher-risk categories will have to comply with stricter conditions than AI systems in lower categories. The Act also contains a list of prohibited applications which can no longer be used in the EU six months after entry into force of the Act.

So beware, in six months your business might not be allowed to use some of the AI systems you use today.

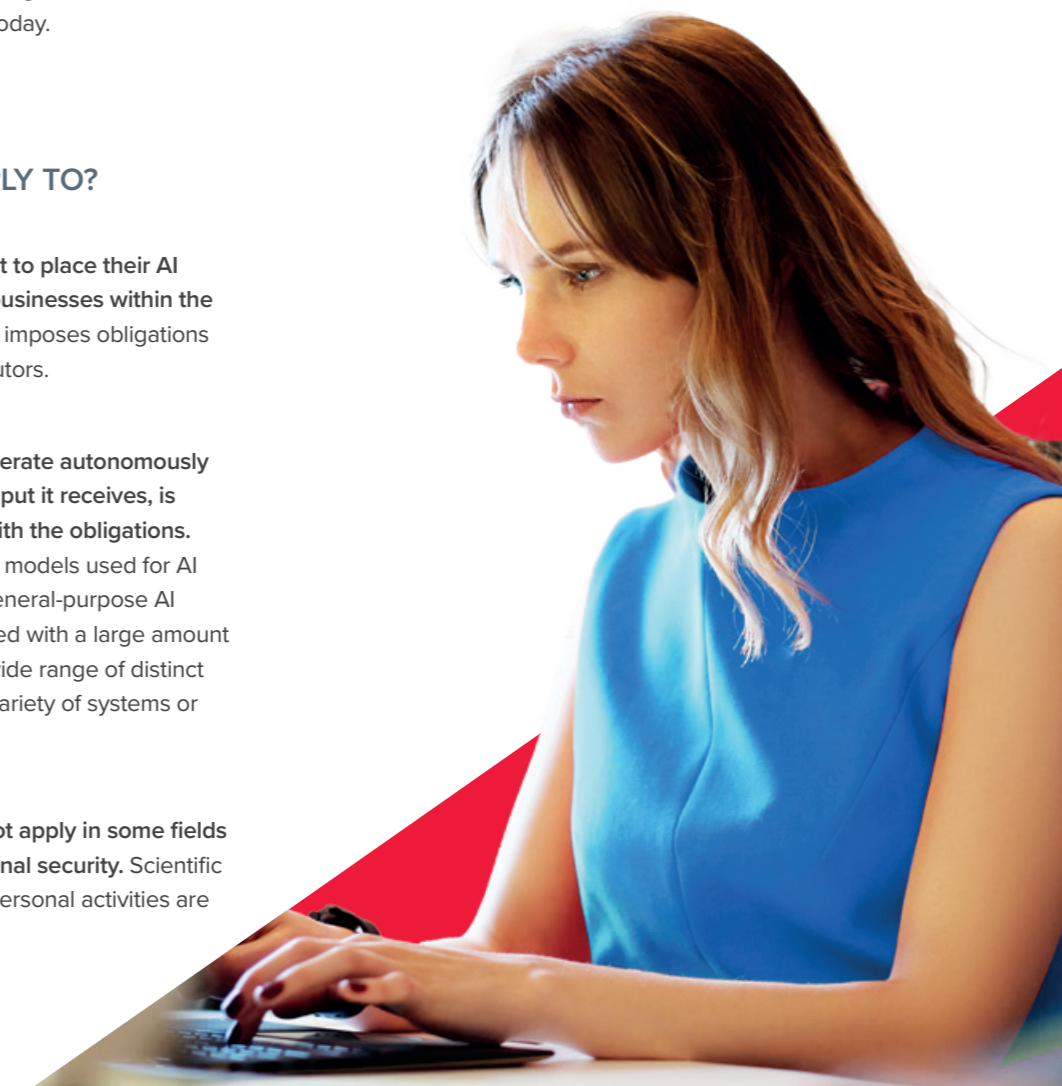
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2 WHO DOES THE AI ACT APPLY TO?

All EU and non-EU businesses that want to place their AI products on the EU market, as well as businesses within the EU that use AI products. The AI act also imposes obligations on others, such as importers and distributors.

Any machine-based system that can operate autonomously on some level and can learn from the input it receives, is an AI system and will have to comply with the obligations. The AI Act also regulates the underlying models used for AI systems, introducing the concept of a general-purpose AI model (GPAI) as being an AI model trained with a large amount of data that is capable of performing a wide range of distinct tasks and that can be integrated into a variety of systems or applications.

Some exceptions apply, the Act does not apply in some fields like military, defence or matters of national security. Scientific research and development and purely personal activities are also excluded from the scope.



3 DOES IT MATTER WHETHER MY BUSINESS DEVELOPS OR ONLY DEPLOYS AI SYSTEMS AND MODELS?

Yes, businesses that develop AI are “providers” and will have to comply with the most obligations. Businesses that use AI are “deployers” and will mostly have to be transparent about their use and the content they generate.

AI SYSTEMS

AI system providers, especially those dealing with high-risk systems, must comply with a series of obligations, such as:

- Ensuring their AI systems meet established requirements (risk management system, data governance and management, technical documentation, record-keeping, transparency and information to deployers, human oversight and accuracy, robustness and cybersecurity).
- Implementing a quality management system.
- Preparing and maintaining technical documentation.
- Keeping automatically generated records.
- Conducting conformity assessments before commercialisation.
- Registering high-risk AI systems.
- Taking corrective measures in case of non-compliance.
- Informing national authorities of any non-conformities and measures taken.
- Affixing the CE marking on high-risk AI systems.
- Demonstrating compliance upon request by the competent authority.

On the other hand, AI system deployers must be transparent about their use and the generated content, with their obligations also depending on the risk level of the AI system.

Any natural or legal person or public authority that uses a high-risk AI system under its authority, except when used for personal, non-professional activities, must, as a deployer, among other requirements:

- Adopt appropriate technical and organisational measures to ensure these systems are used according to the instructions for use.
- Ensure that human oversight tasks are performed by people with the appropriate competence.
- Ensure that input data is relevant and sufficiently representative in view of the intended purpose of the system, to the extent that deployers control such data.
- Monitor the system’s operation and report any risks and incidents to providers, importers, distributors, and market surveillance authorities.
- If the deployer controls log generation, keep automatically generated logs for a period appropriate to the intended purpose of the AI system.
- Inform their employees and worker representatives before implementing a high-risk AI system in the workplace.
- Inform all persons who may be affected by the use of systems that make decisions or assist in decision-making processes.
- Cooperate with the competent authorities.
- Ensure that employees and other persons entrusted with handling and using AI systems on their behalf have an adequate level of AI literacy.

In certain cases, deployers must conduct a fundamental rights impact assessment.

AI system deployers must be transparent about their use and the generated content.

The extent of the obligations providers and deployers will have to comply with depend on the level of risk that is attributed to the AI system or model.

For AI systems with limited risk, like chatbots and AI-generated photos and videos, the Act contains an obligation of transparency. Businesses should inform the persons affected that they are interacting with a machine or machine-generated content.

Minimal-risk AI systems, like AI-enabled video games or spam filters, are not subject to additional obligations.

GENERAL-PURPOSE AI MODELS

General-purpose AI models will, in short, require their providers to draw up and maintain technical documentation, provide information to the providers including on the capabilities and limitations of the model and put in place a policy to comply with copyright and related rights.

General-purpose AI models with systemic risk are subject to additional obligations such as performing model evaluations and assessing and mitigating possible systemic risks and reporting serious incidents to the competent authorities.



4 WHEN SHOULD I BE COMPLIANT?

The Act provides a “grace period”:

- On 1 February 2025, businesses can no longer use prohibited AI.
- On 1 August 2025 obligations for general-purpose AI governance become applicable.
- On 1 August 2026 most of the obligations of the Act become applicable, including some of the obligations for high-risk AI systems.
- On 1 August 2027 the other obligations for high-risk AI systems will apply.

Of course, there are sanctions: **Businesses that fail to comply with the obligations of the AI Act risk fines of up to 35M EUR or 7% of their global turnover.**

5 SO DO I NEED TO DO ANYTHING NOW?

If your business wants to develop AI systems for the EU market or use AI systems in providing services to your clients, you should take measures to ensure compliance from the inception of the AI system as this will avoid a costly post-fact compliance journey and provide a selling point versus non-compliant AI systems.

Even if you are only using AI within your own business, you may face obligations, such as adopting technical and organisational security measures, and assigning human oversight and requirements regarding disclosure of/transparency on the use of AI.

You should assess your role and the risk level of your AI system to take measures on transparency, accountability and risk minimisation.

How can BDO help?

With our integrated services, we can accompany you from the start by:

- Identifying which business processes can benefit from the potential of AI.
- Assisting you in the development of AI tools.
- Providing the assessment and governance of associated risks.
- Documenting and ensuring compliance with legal obligations.

Who can you contact?



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