Morgan Lewis

EU AI ACT COMPLIANCE

10 KEY STEPS FOR PROVIDERS AND DEPLOYERS OF AI SYSTEMS

The European Union's new AI Act (the Act) went into effect on 1 August 2024. The Act is the first-ever comprehensive law focused on artificial intelligence and machine learning (collectively, AI). The Act impacts many businesses—including those operating outside the European Union—that design, develop, or use AI systems or models. As with the EU/UK General Data Protection Regulation (GDPR), violations of the Act may result in significant regulatory fines (including direct liability for group parent companies) and private litigation (including collective litigation).

Consider these steps to point you in the direction of compliance and consult experienced counsel for more tailored analysis and advice. Our team (including a former senior enforcement lawyer at a European regulator) stands ready to assist.

This checklist is a companion to our AI Act-related LawFlash 10 Key Takeaways for Business and Legal Leaders and our GDPR compliance checklist.

STEP 1

Are Any of the Company's AI-Enabled Technologies, Applications, or Products an 'AI System' or 'General-Purpose AI Model'?

If NO: The Act likely does not apply. PROCEED to STEP 10.

If YES: The Act may apply. If the technology is:

- an AI system, PROCEED to STEP 2.
- a GPAI model, consult experienced counsel. This checklist applies only to AI systems.

The Act regulates two kinds of AI: "AI systems" and "General-purpose AI models" (GPAI models). For the meaning of AI systems and GPAI models, see section No. 1 of our LawFlash 10 Key Takeaways for Business and Legal Leaders, "What Kinds of AI Will the Act Apply To?" Companies may need to conduct an appropriate AI inventory (AI mapping) exercise to assist with this analysis.

STEP 2

Will the Business Be Performing Any Functions Regulated Under the Act Relative to the AI System?

If NO: The Act likely does not apply. PROCEED to STEP 10.

If YES: The Act may apply. PROCEED to STEP 3.

The Act applies to multiple stakeholders across the European Union's AI ecosystem, including "providers," "deployers," "importers," "distributors," "product manufacturers," "authorized representatives," and "affected persons."

To determine who are "providers" and who are "deployers," see section No. 2 of our LawFlash 10 Key Takeaways for Business and Legal Leaders, "Which Stakeholders in an AI Ecosystem Will the Act Apply To?"

This checklist only considers providers and deployers of AI systems. For a company performing any of the other regulated functions, consult experienced counsel.

STEP 3

Is the Company Subject to the Territorial Jurisdiction of the Act?

If NO: The Act likely does not apply. Consult experienced counsel. PROCEED to STEP 10.

If YES: The Act may potentially apply. PROCEED to STEP 4.

If a company is "established" (typically, a physical presence) in the European Economic Area (EEA), then it will be subject to the Act. If the company is not established in the EEA, it may still be subject to the Act in certain circumstances. For details, see section No. 3 of our LawFlash 10 Key Takeaways for Business and Legal Leaders, "Will the Act Apply to Companies That Do Not Have Offices in the EU?"

STEP 4

Do Any of the Exemptions Relative to AI Systems Set Out in the Act Apply?

If NO: The Act will likely apply. PROCEED to STEP 5.

If YES: The Act likely does not apply. Consult experienced counsel. PROCEED to STEP 10.

For details regarding exemptions in the Act, see section No. 4 of our LawFlash 10 Key Takeaways for Business and Legal Leaders, "Does the Act Itself Contemplate Any Exemptions from Its Application?"

STEP 5

Is the AI System, or Its Intended Use, Prohibited Under the Act?

If NO: PROCEED to STEP 6.

If YES: There is a material risk that the AI system, or its intended use, will be prohibited under the Act. Consult experienced counsel.

For details regarding prohibited AI systems, see section No. 5 of our LawFlash 10 Key Takeaways for Business and Legal Leaders, "What are 'Prohibited' AI systems under the Act?"

STEP 6

Is the AI System, or Its Intended Use, Treated As 'High Risk' Under the Act?

If YES: PROCEED to STEP 7.

If NO: You will likely be subject to obligations applicable to either transparency risk or minimal-risk AI systems. Consult experienced counsel. PROCEED to STEP 10.

For details regarding high-risk AI systems, see section No. 6 of our LawFlash 10 Key Takeaways for Business and Legal Leaders, "What Are 'High-Risk' AI Systems and the Key Obligations Applicable to Such AI Systems?"

This checklist only considers high-risk AI systems. For AI systems that qualify as transparency risk or minimal-risk AI systems, consult experienced counsel.

STEP 7

Conduct a 'Gap Analysis' Relative to the Applicable Obligations Under the Act.

Examples of key factors to ensure a timely, cost-effective, and effective AI Act compliance program include:

- An appropriate organizational framework, such as a multidisciplinary AI governance committee
- The identification of necessary areas of expertise, including engineering, data science, and legal expertise
- Sufficient resources, including managerial, human, and financial resources

A key step in commencing a compliance program is for the company to determine what "gaps," if any, exist between its current compliance posture (including measures undertaken for GDPR compliance) and that necessary for compliance with the Act on an AI system-by-system basis. The company may also need to undertake a more thorough AI inventory (AI mapping) exercise, building on any AI mapping completed at Step 1.

Another key step is for the company to prepare a matrix of all relevant obligations applicable to the company relative to each AI system, considering its role as a provider or deployer. For details of such obligations, see section No. 6 of our LawFlash 10 Key Takeaways for Business and Legal Leaders, "What Are 'High-Risk' AI Systems and the Key Obligations Applicable to Such AI Systems?"

STEP 8

Consider Relevant AI Act Deadlines in Designing the Compliance Program.

Companies will need to be mindful in designing their compliance programs that the Act's obligations commence application at different times, including with respect to AI systems (and GPAI models) that benefit from the Act's "grandfathering" provisions applicable to AI already in use on certain specified dates.

For details of timescales, see section No. 10 of our LawFlash 10 Key Takeaways for Business and Legal Leaders, "When Will the Act's Provisions Start to Apply?"

STEP 9

Implement an AI Act Compliance Program.

Key outputs from a compliance program to help bridge any AI Act compliance "gaps" may include:

- Creation of appropriate AI governance mechanisms across the company, including in product engineering teams
- Preparation of key AI policies, including (if necessary):
  - Technical and customer (user) AI system documentation
  - Customer and vendor contract terms and conditions
  - AI-use policies for employees and vendors
  - Notices to individuals, such as in connection with workplace AI systems
  - Policies relating to EU product safety regulations
  - "Fundamental rights impact assessments"
  - Playbook to comply with requests made by individuals
- Completion of EU product safety legislation procedures
- Preparation of Declarations of Conformity
- Training of employees and vendors

- Vendor due diligence and management programs
- Appropriate incident response processes
- Procuring appropriate insurance and risk-mitigation tools
- Appropriate liaison with EU and EU member state regulators

STEP 10

Consider Whether Any Other EU/UK Digital Regulatory Laws Apply and Implement an Appropriate Compliance Program.

Whether or not the Act applies to a company's development, offering, implementation, or use of AI, other EU/UK digital regulatory laws may apply—notably, the GDPR, EU member state copyright laws, and product-specific regulations.

The GDPR, for example, contains potentially impactful AI-related restrictions relating to "automated decision-making," "profiling," and data scraping. Our GDPR compliance checklist may provide a useful framework to consider GDPR compliance.

HOW WE CAN HELP

Our lawyers are well suited to help companies navigate the AI Act and AI Act-related compliance, enforcement, and litigation matters.

Our team stands ready to assist companies designing, developing, or using AI in navigating this evolving and complex legal landscape.

If you have any questions or would like more information on these issues, please contact any of the following lawyers listed below:

Vishnu Shankar | London/Brussels
+44.20.3201.5558
vishnu.shankar@morganlewis.com

Christina Renner | Brussels
+32.2.507.7524
christina.renner@morganlewis.com

Dr. Alexander R. Klett | Munich
+49.89.189.51.6040
alex.klett@morganlewis.com

Dr. Christoph Mikyska | Munich
+49.89.189.51.6041
christoph.mikyska@morganlewis.com

Dion M. Bregman | Silicon Valley
+1.650.843.7519
dion.bregman@morganlewis.com

Andrew J. Gray IV | Silicon Valley
+1.650.843.7575
andrew.gray@morganlewis.com

Elizabeth B. Herrington | Chicago
+1.312.324.1445
beth.herrington@morganlewis.com

Doneld G. Shelkey | Boston/Pittsburgh
+1.617.341.7599
doneld.shelkey@morganlewis.com

Gregory T. Parks | Philadelphia/Princeton
+1.215.963.5845
gregory.parks@morganlewis.com

Ezra D. Church | Philadelphia
+1.215.963.5710
ezra.church@morganlewis.com

Kristin M. Hadgis | Philadelphia
+1.215.963.5563
kristin.hadgis@morganlewis.com

Heather Egan | Boston
+1.617.341.7733
heather.egan@morganlewis.com

Hannah Levin | Washington, DC
+1.202.739.5896
hannah.levin@morganlewis.com

www.morganlewis.com

073126_261705