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How To Navigate AI M&A Risks, Compliance In Europe

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The artificial intelligence industry continues to witness substantial deal activity as companies look to streamline operations and improve efficiencies.

2024 was a record-breaking year for merger and acquisition transactions in European AI, with deal values of €8.4 billion (roughly $9.8 billion at current exchange rates) from 176 deals, according to Mergermarket data published last February.[1]

With further AI assets, such as generative AI and foundation model developers, AI-enabled cybersecurity platforms and businesses whose value is driven by proprietary data, algorithms and specialist talent — which are expected to come to market over the next couple of months — European players should be mindful of the unique challenges posed by the acquisition of AI companies.

At its core, the business of AI involves intangible AI technologies, physical AI technologies and the financial ecosystem.

In October, the European Commission launched the following two strategic plans to accelerate the adoption of AI in industry and science:

- The apply AI strategy, which sets out how to speed up the use of AI in Europe's key industries, including healthcare, pharma, transport, energy, defense, media and the public sector;[2] and

- The AI in science strategy, which aims to position Europe at the forefront of AI-driven research and scientific excellence.[3]

These plans complement the AI continent action plan that was launched in April and focused on leveraging Europe's established industrial base and highly skilled workforce to drive AI innovation and accelerate the adoption of AI technologies across key sectors.[4]

This article highlights current market practices in France, Germany and the U.K., relating to the acquisition of companies that develop intangible AI technologies and the implications for businesses and in-house legal teams.

Intangible AI Technologies

Data, whether personal or business, is at the heart of AI. Data is used to develop, train and fine-tune general purpose AI, or GPAI, models and, in certain cases, AI systems.

Likewise, the output from GPAI models and AI systems is usually data too.

Both input and output data create data protection risks under the General Data Protection Regulation's requirements related to personal data; intellectual property risks under the European Union member states' copyright laws and U.K. copyright law; risks under the unique EU and U.K. database right; and contract risks, if the data is subject to contractual restrictions.

Each of these risks creates potentially significant liability for buyers, particularly as many GPAI models are trained on very large datasets.

By way of illustration, the EU's GDPR — now to be distinguished from the U.K.'s GDPR — sets out numerous obligations regarding the handling of personal data, and certain of these obligations could potentially be challenging to satisfy in an AI-related context, notably using personal data to train GPAI models. Further, in-house legal teams should be aware of the importance of conducting appropriate GDPR diligence of the target companies' development and use of AI technologies.

GDPR infringements may subject target companies to litigation and enforcement action. Regulators may levy fines of up to 4% of annual worldwide gross revenues of the infringing target company and/or its undertaking, which may include the target company's new corporate group, even if the breach predated the acquisition.

In addition, under the EU's GDPR, individuals have the right not to be subject to a decision that is based solely on automated processing and without meaningful human involvement. Therefore, from a GDPR diligence perspective, understanding the operational implementation or intended implementation of any AI tools, and the extent to which human involvement forms part of the same, is an important consideration.

Meanwhile, case law surrounding copyright infringement in connection with training and operating AI models is developing in several European jurisdictions.

Europe's New AI Regulatory Framework: The EU AI Act

AI transactions are closing on the backdrop of a constantly evolving regulatory landscape, which includes the EU AI Act, the world's first comprehensive AI and machine learning-focused law.

The act, which has been coming into effect progressively after entering into force on Aug. 1, 2024, regulates both GPAI models and AI systems.

Businesses must keep in mind that the EU AI Act will apply to companies without a physical presence in the EU, in certain circumstances.

The EU AI Act regulates AI systems and GPAI models based on risks that are said to arise from its use, prohibiting certain uses and significantly regulating AI systems that involve high-risk uses.

AI systems that are considered to only have a transparency risk or minimal risk will be subject to far fewer obligations under the act.

The EU AI Act, like the GDPR, allows for parental liability and, depending on the infringement, regulators may levy fines of up to 7% of annual worldwide gross revenues of the infringing target company and/or its undertaking.

Where critical IP is developed by employees or contractors of the target company, the due diligence will be focused on establishing that such rights have been duly assigned to the target company.

Legal teams should note that different jurisdictions have different starting positions on the ownership of IP that is developed by employees.

In France, IP is owned by the employees, except in some specific cases, e.g., software, requiring entry into suitable assignment agreements with employees prior to closing a proposed transaction.

Under German law, IP rights that are created or developed by employees in the course of their duties generally transfer to the employer, to the extent that this results from the scope or nature of the employment agreement.

English law is similar to German law in this regard, though particular attention needs to be paid to IP that is developed by senior individuals, such as founders or directors, who may not be employees and who may have greater scope to argue that they, rather than the company, own their developments.

Open-source licenses may require the target company to disclose, free of charge, the source code of any software or program that integrates such open-source software. This could significantly affect the value of an AI company.

In the last two years, the European Commission and the Competition and Markets Authority have reviewed multiple AI partnership agreements.

If the partnership agreement results in material influence or de facto control, or if the governance and commercial arrangements result in a change of control, a merger filing obligation may arise.

AI transactions are likely to give rise to foreign direct investment filings if the AI product concerns critical technologies, military or dual-use items.

Twenty-six of the 27 EU member states have an active foreign direct investment regime, along with the U.K., and these regimes often require AI transactions to be notified, which affects the transaction documentation and the overall deal timeline.

Risk Allocation

Risk allocation in AI deals is not fundamentally different from risk allocation in any other merger and acquisition transaction.

If a material issue is identified in the diligence process, including with respect to the GDPR and the EU AI Act, the buyer will need to determine whether this should be addressed prior to closing, or whether a post-closing solution is desirable.

Certain issues may require negotiating a reduction in the purchase price, or an escrow or holdback arrangement, to reflect the risk assumed by the buyer and the estimated cost of addressing the issue post-closing.

Escrow agreements are less common in domestic German and French deals, compared to U.K. and U.S. practices, but are increasingly used in cross-border transactions to secure indemnity obligations.

Businesses must weigh the potential reputational risk of proceeding with a transaction that poses a significant risk of infringing third-party IP rights, or where the target company has repeatedly failed to comply with the GDPR or the EU AI Act.

Under English law, governed deals, warranties and specific indemnities for known issues are typical mechanisms that deal with risk allocation. French and German deal practice is similar, and any combination of these measures can be used to manage risks.

However, German law imposes statutory limitations on liability waivers and specific indemnities are treated as contractual obligations, which may not benefit from the same flexibility as under English law.

Key Takeaways

As we enter 2026, AI M&A in Europe builds on the record-breaking wave of 2024 transactions in European AI, driven by strategic consolidation around generative AI platforms and AI-enabled cybersecurity, but tempered by execution risk, talent integration, model performance verification and regulatory uncertainty.

The European Commission's strategic plans to accelerate responsible AI adoption continue to shape the policy backdrop, underscoring that data remains the core value driver in AI.

Buyers should consider issues relating to the rights to use critical IP, how the target's AI systems are trained, the use and transfer of data, and compliance with regulatory obligations under the GDPR and the EU AI Act. Buyers should also be mindful of foreign direct investment and merger control filings that may affect timing.

The regulatory landscape continues to evolve and adapt to the new challenges posed by transactions involving AI systems.

While the risk allocation mechanics in AI deals are consistent with those used in other sectors, parties should identify the risk areas and establish optimal mechanisms for risk allocation.

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[1] https://ionanalytics.com/insights/mergermarket/europes-ai-sector-consolidates-as-region-seeks-to-keep-pace-with-us-asia-dealspeak-emea.

[2] https://digital-strategy.ec.europa.eu/en/policies/apply-ai.

[3] https://digital-strategy.ec.europa.eu/en/library/ai-continent-action-plan, https://digital-strategy.ec.europa.eu/en/news/commission-launches-two-strategies-speed-ai-uptake-european-industry-and-science.

[4] https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1013.