

Weighing PE Transaction Risks As EU AI Act Rolls Out

By **Lyndsey Laverack, José Rodrigues and Moritz Hüsich** (July 22, 2025, 10:08 AM EDT)

The European Union Artificial Intelligence Act introduced harmonized rules on artificial intelligence, with direct applicability in all member states.[1] It is a complex piece of legislation, with extraterritorial reach and heavy penalties.

While most provisions, like those on general purpose AI, or GPAI, models and penalties, will apply from Aug. 2, 2026, provisions on prohibited AI practices started to apply from Feb. 2, 2025.

In light of the imminent application of important parts of the EU AI Act and the not-so-distant date for the application of the remainder, in this article we draw attention to the legal risks to be considered in private equity transactions in connection with this legislation.

AI is subject to a complex framework of legislation, not only the EU AI Act. However, it is only the EU AI Act that we consider here.

Regulated Technologies and Actors

The European Union Artificial Intelligence Act essentially regulates technologies and actors.

The main regulated technologies are AI systems and GPAI models.

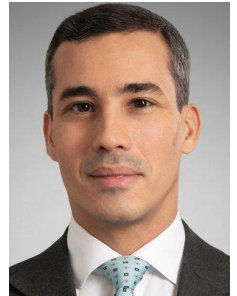
An AI system is defined as

a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.[2]

In this context, on Feb. 2, the European Commission published guidelines on this definition.[3] As the guidelines say, the definition should not be applied mechanically, and each system must be assessed on its characteristics.



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A GPAI model is defined as

an AI model, including where such an AI model is trained with a large amount of data using self-supervision at scale, that displays significant generality and is capable of competently performing a wide range of distinct tasks regardless of the way the model is placed on the market and that can be integrated into a variety of downstream systems or applications.[4]

While at present there are no guidelines interpreting a GPAI model, a consultation was launched by the commission in April to clarify rules for such models.[5]

The main actors subject to obligations under the EU AI Act are providers and deployers. These definitions are less technical and simpler to explain in plain terms: While a provider is essentially someone that develops an AI system or GPAI model, a deployer is someone that uses an AI system professionally.

In addition to providers and deployers, there are further relevant actors regulated in the EU AI Act — importers, distributors, authorized representatives and product manufacturers. These actors are also referred to as operators.[6]

Extraterritorial Scope

The EU AI Act has extraterritorial reach. It will apply to any organization or individual that places an AI system or GPAI model on the EU market, or puts them into service on the EU market, regardless of where they are established or located.

It will also apply to any provider or deployer located or established outside the EU if the output of the system is used in the EU.

Private equity managers should then bear in mind that, regardless of the location of a target company, its activities will have to be considered to understand if the EU AI Act may be of application.

Risks Apply to all Sectors

It would be misguided to say that the EU AI Act should be considered only when the target company's activity is focused on the creation or development of AI technologies. This is because the EU AI Act imposes compliance obligations on companies at different levels in the AI supply chain, and not just providers.

All companies using AI can in principle fall within the notion of deployers and thus be subject to the EU AI Act, regardless of their sector.

One recent study noted that 75% of private equity executives surveyed were using AI for value creation in portfolio companies or planned to do so in the next 12 months.[7]

It is easy to understand why: The implementation of AI can transform how portfolio companies sell, what they sell, and how they create products and services,[8] ultimately aligning with the private equity model of buying companies, improving performance, and selling them.

It seems reasonable to predict, then, that it will become increasingly more frequent for private equity managers to invest in companies that are already using some form of AI technology, or, at least, that by the time an exit takes place, such technologies will have been implemented, and that this can be the case across different sectors.

A prudent buyer or investor will therefore understand that compliance with the EU AI Act is a relevant matter for all companies, not only technology companies.

Initial Questions to Consider

We suggest that the following should be the initial questions in any analysis of EU AI Act compliance risks in a transaction:

- Does the target company develop or use any AI technology?
- If yes, is the AI technology regulated under the EU AI Act? Depending on the scenario, this might also include a deeper analysis of the question of whether the AI technology is captured by the territorial scope of the EU AI Act, as discussed earlier and whether any exclusions apply, e.g., the EU AI Act does not apply to AI systems that are used for military services.[9]
- If the AI technology is regulated by the EU AI Act, additional questions should be considered to understand the nature of the AI system, e.g., whether it is high-risk, or model concerned, and which role or roles the target company takes in the ecosystem of the AI Act, e.g., is it a deployer only, or is it a provider as well.

Based on the answers to the questions above, one can identify the provisions of the EU AI Act that apply to the target company and analyze to what extent the target company complies with these provisions. In the case that one identifies noncompliance, further analysis should be performed to understand how the target company can achieve a reasonable compliance level and, also, the liability risk under the EU AI Act.

Risk-Based Distinctions

The EU AI Act distinguishes between different AI systems based on a risk classification.

At the upper end of the scale are prohibited AI practices. These are prohibited given their potential for manipulative, exploitative and social control use.

A full list of these practices is provided by Article 5, Paragraph 1, which applies since Feb. 2; the infringement of any such prohibition will attract the highest tier of fines. The presence of a prohibited AI practice will be a material issue in any transaction.

Another category is that of high-risk AI systems. The act defines these systems as those that:

- Are intended to be used as a safety component of a product covered by the legislation listed in Annex I or are themselves that product, and the product is required to undergo a conformity assessment; or
- Are referred to in Annex III to the EU AI Act, unless they do not pose significant risks.[10]

High-risk systems need to meet certain technical requirements, which concern risk management systems, data and data governance practices, availability of certain technical documentation, record-keeping, transparency and provision of information for deployers, human oversight, and cybersecurity.[11]

Providers will need to ensure compliance with these technical requirements, including, among other obligations: complete a conformity assessment and draw up a declaration of conformity, register the AI system in the EU database, implement a quality management system to ensure compliance and retain certain documentation for 10 years.

The obligations are less onerous for deployers, but still significant, as deployers need, for example, to establish appropriate technical and organizational measures to ensure the system is used in compliance with its instructions and assign human oversight to individuals appropriately qualified and with the required authority.

A third category is that known as "limited risk" AI systems, although this is not a defined term in the EU AI Act, which covers certain AI systems that are subject to transparency requirements, e.g., AI systems that are intended to interact directly with natural persons.

The transparency requirements shall guarantee that individuals are aware that they are interacting with AI or that the output was AI-generated. Providers and deployers have different transparency obligations.

There is also a fourth category known as minimal or no risk systems, which comprises all AI systems that do not fall within any of the categories above. It is expected that the vast majority of existing AI systems would fall within this category.

GPAI Models

Separate obligations apply to providers of GPAI models, including: the obligation to compile certain technical documentation for the European Commission AI Office,[12] the obligation to prepare information and documentation for downstream providers that intend to incorporate the GPAI models into their AI systems, the obligation to put in place a policy to comply with EU copyright laws, and the obligation to make publicly available information about content used for training, based on a template provided by the AI Office.

GPAI models with systemic risk are subject to additional obligations. Article 51, Paragraph 1, defines what can be considered as GPAI models with systemic risk.

Penalties

Penalties will apply from Aug. 2.[13] The highest penalties apply to prohibited AI practices and can amount to the higher of €35 million (\$40.8 million) or 7% of the total worldwide annual turnover of the undertaking.

Most core obligations attract a maximum fine of the higher of €15 million or 3% of the total worldwide annual turnover of the undertaking, which is still significant.

It remains to be seen how the fines will apply in practice. It is possible that regulators and courts will

apply the same criteria that they apply to determine parental liability for infringements of EU competition rules — the European Data Protection Board applies the same approach to infringements of the EU's General Data Protection Regulation.[14]

In this case, private equity sponsors could be exposed to enforcement risks if they had a decisive influence over the target company at the time of the infringement, which is typically the case if the private equity sponsor held 100% or close to 100% of the capital.

Furthermore, there is a risk that turnover of the undertaking is calculated broadly to include revenues of the sponsor as well. For these reasons, careful consideration should be given to governance and policies and procedures at fund level when it comes to AI.

Conclusion

The EU AI Act is a complex piece of legislation. It rests on the application of highly technical definitions and other provisions that are difficult to interpret and apply in practice.

Article 96 provides that the commission will develop guidelines on several topics, to assist with interpretation. Some guidelines are already available, but there are many others yet to be published.

Investors and their advisers should monitor these developments and consider how to incorporate the analysis of EU AI Act compliance in their acquisition and due diligence practices, considering the potential serious consequences of breaches.

Understanding the technology used by a company — or that will potentially be used by a company in the future — is a foundational requirement for compliance.

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[1] Regulation (EU) 2024/1689.

[2] EU AI Act, Article 3, para. 1.

[3] <https://digital-strategy.ec.europa.eu/en/library/commission-publishes-guidelines-ai-system-definition-facilitate-first-ai-acts-rules-application>.

[4] EU AI Act, Article 3, para. 63.

[5] <https://digital-strategy.ec.europa.eu/en/news/commission-seeks-input-clarify-rules-general->

purpose-ai-models.

[6] EU AI Act, Article 3, para. 8.

[7] <https://www.fticonsulting.com/insights/reports/2024-private-equity-ai-survey>.

[8] <https://www.fticonsulting.com/insights/articles/ai-private-equity-three-plays-driving-value-creation-2025>.

[9] EU AI Act, Article 2, paragraph 3.

[10] EU AI Act, Article 6, paras. 1 and 2.

[11] EU AI Act, Section 2 of Chapter III.

[12] The AI Office is part of the European Commission (Article 3, paragraph 47, Article 64).

[13] 2 August 2026 for providers of GPAI models.

[14] https://www.edpb.europa.eu/system/files/2023-06/edpb_guidelines_042022_calculationofadministrativefines_en.pdf - para. 118 et seq.