

Wendt / Wendt

New Artificial Intelligence Act

A Practitioner's Guide



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edited by

Janine Wendt
Domenik H. Wendt

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Foreword

The Artificial Intelligence Act (AI Act) establishes the first legal framework for the development, placing on the market, and use of artificial intelligence (AI) in the European Union (EU). The EU regulation is the world's first comprehensive set of rules that attempts to keep the application of AI within the bounds of product safety law while also safeguarding fundamental rights.

The basic idea behind the AI Act is a horizontal regulatory approach. This is accompanied by a risk-based differentiation of the intensity of intervention by AI systems. This risk-based differentiation is fundamentally technology-neutral and based on the area of application of an AI system. Depending on the risk profile of the application scenario, a four-tier regulatory framework applies, distinguishing between unacceptable risk, high risk, transparency risk, and minimal risk. The AI Act standardizes numerous compliance requirements, particularly for providers and deployers of so-called high-risk AI systems. It also sets standards for general-purpose AI (GPAI).

The AI Act also forms the basis for a new supervisory regime that relies on cooperation between authorities at EU level and in the EU Member States. The EU Commission, with its affiliated AI Office, is taking control of GPAI and formulating guidelines for certain aspects of the AI Act. Other supervisory activities will be carried out by national authorities.

The AI Act is supplemented by harmonized standards. These are intended to help implement the compliance requirements in AI systems. These standards are currently being developed by the CEN-CENELEC Joint Technical Committee 21 (JTC 21) Artificial Intelligence at EU level.

Since the AI Act came into force on 1.8.2024, the new law on artificial intelligence in the EU has developed dynamically. The legal framework for AI systems and AI models Act has taken shape. The EU Commission's guidelines on AI systems and prohibited practices, which have been published in the meantime, specify the requirements of the AI Act. A living repository is intended to provide guidance on the implementation of measures to ensure the necessary AI competence. The provisions of the AI Act on GPAI models are accompanied by the AI Office's first practical guide (Code of Practice for General-Purpose AI Models). The EU Commission has also developed further guidelines for providers of these models. Additional provisions on the new supervisory system have been created via a new delegated act. Case law is also increasingly dealing with AI systems and AI models and the regulatory requirements to be observed in this regard.

This handbook is intended to provide clear and quick access to the complex new regulatory system. We have therefore endeavored to break down the sometimes complex requirements into a readable format. The primary goal is to provide a basic understanding of the new regulatory framework. This book does not aim to provide a detailed examination of the individual requirements of the AI Act.

The subject matter regulated by the AI Act, AI, is also not yet an everyday topic. For this reason, the technological basics are discussed at the beginning of this book to the extent that they are necessary for understanding the requirements of the AI Act.

In addition to the provisions of the AI Act, this handbook also outlines the basic aspects of copyright and liability law that must be observed when using AI systems and models.

In order to facilitate access to the relevant legal requirements, we have reproduced the AI Act, together with explanatory notes and appendices, in the book in consultation with the publisher. In addition, we have compiled a list of sources with links to

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the individual texts in the chapter ‘Overview: Legal sources, administrative practice, and standards’. The overview also includes a list of standards published to date by the CEN-CENELEC Joint Technical Committee 21 (JTC 21) Artificial Intelligence.

We would like to thank Beck/Hard/Nomos, in particular Dr. Marco Ganzhorn, whose tireless efforts were a major motivation for this book.

This is the first edition of the handbook. We have compiled it with the greatest possible care. Should you notice any errors while reading, we would be grateful for any helpful comments.

Janine and Domenik Wendt, August 2025

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I. AI as a universal technology to be regulated

- 1 In recent years, AI has developed into a **universal technology**.¹ It has begun to slowly but irreversibly change our everyday and economic lives. The change is being driven by the promise of **increased productivity and efficiency** as well as cost reductions.
- 2 In fact, we are already encountering AI applications in many areas that deliver on this promise and improve our lives. The most striking upheavals are in key areas such as medicine.² Here, AI is making it possible to increase the accuracy of **predictions**³ and thus make better decisions.⁴ For example, an AI called Path-BigBird can process pathology reports and provide accurate information about a cancer in almost real time.⁵ It is clear that these and similar AI applications rapidly accelerate **medical progress**.⁶
- 3 But we are also increasingly encountering AI applications in everyday life. Apple's **integration** of generative AI into devices such as smartphones, for example, is likely to lead to a rapid and comprehensive impact of AI on daily routines in private and professional environments. The integration of generative AI into Office solutions offered by Microsoft also promises fascinating progress. Further investment in data, skills and digitized workflows is still required to unlock the full potential of AI. Currently, 37 % of German companies surveyed in a study by the IW future panel state that they use AI. This usage rate is high compared to previous studies. The OECD recorded a rate of use of only 13.3 % in Germany in 2024. For Europe the EU Commission has identified a rate of just under 20 % in 2024. Compared to AI pioneers such as China, where 50 % of companies were already using AI in 2023, the share is still low.⁷ However, AI is al-

¹ Roth-Isigkeit MMR 2024, 621 (621).

² Antweiler/Beckh/Chakraborty/Giesselbach/Klug/Rüping, Natural Language Processing in der Medizin, Whitepaper Fraunhofer IAIS 2023, https://newsletter.fraunhofer.de/public/a_14338_S4Jd/z/file/data/4410_Fraunhofer_IAIS_Whitepaper_Clinical_NLP_Web.pdf.

³ AI systems are already outperforming humans in the analysis of medical images, see Botta ZfPC 2024, 42 (42).

⁴ See also the examples in Schürmann ZD 2022, 316 (317) and Botta ZfDR 2022, 391 (394).

⁵ Chandrashekar/Lyngaas/Hanson/Gounley/Gao/Wu, JCO Clinical Cancer Informatics, <https://doi.org/10.1200/CCI.23.00148>.

⁶ Frost/Steininger/Vivekens MPR 2024, 4 (6).

⁷ See IW Future Panel: https://www.iwkoeln.de/fileadmin/user_upload/Studien/Report/PDF/2025/IW-Report_2025-KI-als-Wettbewerbsfaktor.pdf?utm_source=chatgpt.com as well as ifo Business Survey: <https://www.ifo.de/fakten/2025-06-16/unternehmen-setzen-immer-staerker-auf-kuenstliche-intelligenz>.

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ready being used successfully in many companies today. Even a simple AI assistant such as Klarna Bank AB's chatbot conducts around 2.3 million customer conversations in a month. This is equivalent to the work of 700 full-time employees.⁸ Thanks to the accuracy of the AI's responses, the number of repeated requests is said to have fallen by 25 %. An average conversation now only takes just under two minutes – compared to eleven minutes previously required by a human employee. The chatbot is also available around the clock in more than 35 languages.

What these successful AI applications also have in common is that they are all still in the early stages of development. They have the **potential** to overcome global challenges and increase **innovation** and growth.⁹

At the same time, the rise of AI is triggering **fears**.¹⁰ How will AI affect the labor market? Will large sections of the working population lose their jobs?¹¹ Studies show: The greater the knowledge about AI, the greater the perceived threat.¹² A quote from Jensen Huang, CEO of Nvidia, fits in with this: “AI won't take your job. But, if you are not using AI, you are going to lose your job to somebody who uses AI”.¹³ This raises the question: How can we steer the development of AI in the right direction? How do we deal with the **risks**, undesirable side effects and **ethical dilemmas** – in everyday life, but also in business? How do we deal with self-driving cars, virtual medical assistants or **fake news**?¹⁴

The first AI Safety Report was published on 29.1.2025.¹⁵ “With all the noise surrounding AI, this report aims to provide policymakers with an evidence-based, balanced overview of the risks of AI and how to mitigate them,”¹⁶ explained AI pioneer Yoshua Bengio, under whose leadership the nearly 300-page report was produced.¹⁷ The Safety Report focuses on AI systems that can perform a wide range of tasks, so-called “general-purpose AI” (GPAI) (→ § 11 mn. 1). It impressively demonstrates how quickly this technology has developed. For example, the best models in scientific reasoning tests have leaped from “random guessing” to “PhD-level experts” in the space of 18 months.¹⁸

As its capabilities grow, so do the potential risks, including “large-scale impacts on the labor market, AI-based hacker attacks or biological attacks” and even “a loss of control of general-purpose AI by society”. The report also lists further challenges, including copyright issues, damage caused by fraud, privacy violations, distorted results and general reliability issues.¹⁹ The focus is therefore on the question of the trustworthiness of AI systems.

⁸ See also Batista LTZ 2024, 118 (118).

⁹ Botta ZfDR 2022, 391 (392 et seq.).

¹⁰ See only DIE ZEIT 14.3.2024, 12.

¹¹ Broлло/Dabla-Norris/deMooij/Garcia-Macia/Hanappi/Liu/Nguyen, Broadening the Gains from Generative AI: The Role of Fiscal Policies, IMF study of 17.6.2024.

¹² Buxmann FAZ 18.8.2025.

¹³ Huang, Milken Institute Global Conference 2025 of 6.5.2025.

¹⁴ Gaub/Kadler Rethinking Law 6.2022, 4 (5).

¹⁵ International AI Safety Report – The International Scientific Report on the Safety of Advanced AI, 2025, <https://www.gov.uk/government/publications/international-ai-safety-report-2025/international-ai-safety-report-2025>.

¹⁶ See <https://yoshuabengio.org/2024/07/09/reasoning-through-arguments-against-taking-ai-safety-seriously/>.

¹⁷ <https://arxiv.org/pdf/2501.17805>.

¹⁸ International AI Safety Report – The International Scientific Report on the Safety of Advanced AI, 2025, p. 42.

¹⁹ Bachgrund/Nesum/Bernstein/Burchard CR 2/2023, 132 (135).

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- 8 It is about the risk of **reinforcing** existing unconscious **prejudices**, for example in relation to gender or ethnic origin,²⁰ the violation of human rights or values such as the **protection of privacy**. There is also growing concern that AI systems will reinforce inequalities, **market concentrations** and digital divides.
- 9 In order to get the right answers to these questions, we need to take a close look at the opportunities and risks associated with the use of AI. **International cooperation** and joint solutions **are** needed to steer the development and use of AI in a way that benefits us all. Ultimately, it is the **responsibility of the legislature** to formulate clear boundaries and requirements to enable the use of human-centered, **trustworthy AI**.
- 10 The fact that the European Union (EU) is leading the way here with the Artificial Intelligence Act (AI Act) is courageous. With the AI Act, the EU has launched the world's **first comprehensive regulatory system for AI**.²¹ In doing so, it is daring to introduce groundbreaking legislation that will have an impact on the global AI landscape and, in the best-case scenario, lead to a "**Brussels Effect**".²² Despite the criticism of individual regulations, this drive deserves respect. Well-balanced rules will be needed at the latest when AI enters the mainstream of society. The AI Act, the first provisions of which have been in force since February 2025, was well timed for this moment.

II. Accelerating change through generative AI

- 11 With ChatGPT, the age of generative AI dawned at the end of 2022. Unlike regular machine learning, generative AI is not only able to independently find patterns in large data sets, but also to create new content such as texts, images, code, and more based on the identified relationships. This meant that dialog formats were now possible; the time had come when humans could talk to machines.²³ ChatGPT allowed AI to arrive in the middle of society. OpenAI published an early demo of the chatbot on 30.11.2022, which spread rapidly on social media due to its many possible applications. As an AI system, **ChatGPT** was based on the GPT-3 AI model, which had been developed two and a half years earlier. But it was the release of ChatGPT that marked the **decisive moment**, when it became clear to the general public just how influential this technology could become.²⁴ Just as the iPhone made the revolution of mobile access to information and services possible with its launch on 29.6.2007, the turn of the year 2022/2023 marks the turning point of AI.²⁵ Generative applications, for which ChatGPT has almost established itself as a generic name,²⁶ made the technology accessible to the general public.

²⁰ Feldkamp/Kappler/Poretschkin/Schmitz/Weiss ZfDR 1/2024, 60 (105, 112); Kuntz ZfPW 2022, 177 (178); Schürmann ZD 2022, 316 (321); Gaub/Kadler Rethinking Law 6.2022, 4 (6); Ibold GSZ 2024, 10 (13).

²¹ See Wendt/Wendt ZfPC 2024, 86 (86); only China has also passed an AI law, although this only covers individual sectors and generative AI, see Hacker/Berz ZRP 2023, 226 (226); Blasek RD*i* 2023, 557 (557).

²² Haar MMR 2023, 397 (397); Frost/Steininger/Vivekens MPR 2024, 4 (4); Dix/Seyerlein-Klug ZD-Aktuell 2024, 04506.

²³ Möller-Klapperich NJ 2023, 144 (144).

²⁴ See also Meckel/Steinacker, Alles überall auf einmal, 17; Baumgartner/Brunnbauer/Cross MMR 2023, 543 (543).

²⁵ Martini/Wiesehöfer NVwZ 2024, 137 (137).

²⁶ Altenburg/Scherr LTZ 2024, 34 (34).

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Chatbots existed long before ChatGPT. The **GPT models** used in the chatbot 12 have also existed in their various **iterations since June 2018**.²⁷ However, it was the combination of ChatGPT with the then **AI model GPT-3** that made it possible to draft an email, a LinkedIn post or even an entire essay, summarize a meeting that had just been held and reformulate a school report in the style of Shakespeare.²⁸ The improved version of the AI model GPT-3.5 used in ChatGPT, released in March 2023, finally attracted widespread attention.

User numbers for ChatGPT grew to one million people in just five days; after 13 two months, 100 million people were already using the tool.²⁹ This is the **most rapid increase in access to an application** since the invention of the Internet.³⁰

III. Developments in and around OpenAI

Interestingly, the discussion about the changes brought about by generative AI 14 is not only taking place in the media and academia, but also in the company itself that triggered the "**ChatGPT moment**. In the US company **OpenAI**, a farce began to unfold in 2023, which will be briefly recounted here in view of the concerns behind it: Sam Altman, Ilya Sutskever, Elon Musk, Greg Brockman and a few others founded the non-profit organization "Open Artificial Intelligence" – OpenAI – in 2015. Their original goal was to develop open-source AI in a **non-profit organization**. However, as early as 2017, they realized that the financial resources for the development of AI systems could not be procured via the non-profit route. Altman initiated a change in strategy and founded a company under the umbrella of OpenAI in 2019 that was allowed to be profitable – OpenAI LLC. Altman becomes Chief Executive Officer, Musk leaves. New investors join, above all Bill Gates. Microsoft finances Altman's work.³¹ It is also Altman who brings ChatGPT to the public, almost single-handedly starting a **hype**.³² Together with Brockman, Altman becomes the **face of (generative) AI**.

The tide turns during the summer of 2023. Sutskever sees a danger in the rapid 15 progress of artificial intelligence. He fears that a **superintelligence** could disempower humanity. To fight back, Sutskever founds an Alpha Taskforce and calls it the Super-alignment Team – it is supposed to **contain the AI and bind it to rules**. But Altman's work can no longer be contained.

Sutskever rallies the original OpenAI team behind him and **dismisses Altman** on 16 17.11.2023, stating in a public statement that he had not been open in his communication. In response, Brockman also resigned from his role as President of OpenAI. Shortly afterwards, Microsoft announced that Altman was moving to Microsoft, which had invested more than USD 10 billion in OpenAI at the time, to lead a new AI research team. When almost 800 OpenAI employees also threatened to leave for **Microsoft**, Sutskever gave up. OpenAI announces that it has succeeded in bringing Altman back as CEO and Brockman as President.

A good four months later the story continues with another chapter. On 1.3.2024, 17 Musk **filed a lawsuit** in the US **against OpenAI** as well as Altman and Brockman for

²⁷ See also the table in Conrads/Schweitzer NJW 2023, 2809 (2811).

²⁸ Meckel/Steinacker, Everything everywhere at once, 17.

²⁹ The telephone took around 75 years to reach this target, while WhatsApp took three and a half years, i.e. around 21 times as long, see the world of statistics and Haar MMR 2023, 397 (397).

³⁰ Haar MMR 2023, 397 (397).

³¹ Kerkmann/Scheuer, Handelsblatt of 14./15./16.7.2023, 45 et seq.

³² Birska/Röver ARP 2024, 21 (21).

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breach of contract and breach of fiduciary duty. Musk argues that OpenAI has abandoned its original mission to develop artificial intelligence for the benefit of humanity. In the founding agreement, OpenAI was obliged to make its technology open source. Instead, OpenAI had switched to a profit-oriented model and degenerated into a de facto subsidiary of Microsoft. However, the “founding agreement” on which Musk’s lawsuit is based does not appear to be a formal contract, but rather a sentiment based primarily on emails. In response to the allegations, OpenAI made public that Musk had supported the plans to found the for-profit company, and that he even wanted to lead it and merge it with Tesla.

- 18 The extent to which OpenAI will maintain its non-profit status, at least for its parent company, remains unclear. On 26.9.2024, the company announced that it will withdraw the majority stake from the umbrella organization, which controls the for-profit part of the company through the board of directors, and remove the cap on investor returns. On 5.5.2025, the company reversed its decision. Despite months of preparation, OpenAI surprisingly abandoned its plans to transform the company into a purely for-profit start-up. According to a report by the Bloomberg news agency, Microsoft raised concerns and prevented the transformation. Several investors shared Musk’s concerns that, if focused solely on profit, the company could neglect precautions against negative, sometimes even dangerous consequences of AI.³³

IV. Artificial General Intelligence (AGI)

- 19 Another point of attack in Musk’s lawsuit concerns so-called **Artificial General Intelligence** (AGI) research.³⁴ As a very advanced development stage of artificial intelligence, Artificial General Intelligence is said to be characterized by the fact that it is able to solve or process very different tasks and situations without the help and control of a human being, just like “general common sense”. In particular, the degree of autonomy is significantly increased compared to the currently predominant Narrow Artificial Intelligence (NAI) systems.³⁵ However, it is by no means clear which specific capabilities the term encompasses.³⁶ OpenAI recently presented a five-level classification system that maps progress towards AGI: At level 1 are chatbots with conversational capabilities, at level 2 problem solvers at PhD level referred to as reasoners, at level 3 autonomous agents that can perform actions, at level 4 the so-called innovators AI that invents things and at level 5 ultimately as AGI an organizer AI that can take over the work of an entire organization.³⁷ The statement of claim already refers to GPT-4 as an AGI, which can only correspond to the definition if interpreted very broadly. While the GPT-5, -4, -4o and -o1 models continue the trend of exponential improvement over previous versions and bring us closer to a future where AI seamlessly integrates into our daily lives, the reality is arguably less spectacular than the lawsuit suggests.

³³ Alvares de Souza Soares, Handelsblatt 6.5.2025.

³⁴ See also Haar MMR 2023, 397 (398).

³⁵ Cf. Keber/Zenner/Hansen/Schwartzmann in: Schwartzmann/Keber/Zenner Part 1, Chapter 2, para. 8; Hildesheim/Schmid/Holoyad, in: Schmid/Hildesheim/Holoyad, Künstliche Intelligenz – gestern, heute, morgen 3 (14).

³⁶ Hildesheim/Schmid/Holoyad, in: Schmid/Hildesheim/Holoyad, Künstliche Intelligenz – gestern, heute, morgen 3 (14).

³⁷ According to its own information, OpenAI is currently close to Level 2, see <https://the-decoder.com/openai-unveils-five-level-ai-scale-aims-to-reach-level-2-soon/>.

§ 1 Introduction

Q* is also mentioned, another AI model from OpenAI, which is said to be able to solve math problems at primary school level, which is not a matter of course for a language model. 20

American courts must now decide whether GPT-4, Q* or other models are actually already AGI. If GPT-4 was indeed already AGI, OpenAI should never have given Microsoft access to it. The founding statute of OpenAI stipulates that AGIs should be available to all mankind.³⁸ 21

However, Musk has already tried to delay the development of AI several times in the past: In March 2023, he published an open letter together with other big names in the tech industry in which they called for a pause in AI development.³⁹ *“Advanced AI can represent a profound change in the history of life on Earth. [It should be [planned and managed] with appropriate care,”* it says.⁴⁰ It was quickly suggested that concerns for humanity were joined by a desire to buy time in the competition for commercially successful AI systems.⁴¹ In fact, shortly after signing the letter, Musk is said to have pushed ahead with his own **Large Language Model (LLM)** – the chatbot Grok from xAI. According to Musk, Grok is a chatbot that remains “based”. It is expressly not intended to give only politically desired, i.e. “woken” answers and challenge OpenAI.⁴² 22

V. Danger of disinformation

There is no doubt that the use of AI – especially in the context of **chatbots** and **deepfakes** – poses risks to humanity.⁴³ Under the title “AI as a Public Good: Ensuring Democratic Control of AI in the Information Space”, the International Forum on Information and Democracy published a comprehensive study in February 2024⁴⁴, which deals with the **social risks of AI**. The more advanced capabilities and commercial spread of systems such as ChatGPT show their “increasing potential to **profoundly influence democratic processes**, including the information and communication space”, it says. They therefore pose “significant challenges” that “require great attention” 23

Researchers Viviana Padelli, Kaye Celine Palisoc and Lia Chkhetiani found that a significant percentage of AI-driven **misinformation** is related to elections.⁴⁵ There are still many gaps in knowledge in this area, for example about the use of generative AI for **microtargeting** for the purpose of personalized voter manipulation.⁴⁶ Accordingly, AI companies are advised to involve independent researchers and civil society actors as part of an “**inclusive and participatory process**” and to set up procedures for risk mitigation and the systematic collection of user feedback and complaints. They should also cooperate with “trusted whistleblowers” and **inform users about the use of data**. 24

³⁸ See also Glauner in: Ebers/Quarch, Technische Grundlagen von generativen KI-Modellen, para. 58.

³⁹ Krüger/Wagner ZfPC 2023, 124 (124).

⁴⁰ Future of Life Institute 22.3.2023, <https://futureoflife.org/open-letter/pause-giant-ai-experiments/>.

⁴¹ Zellinger Der Standard 5.3.2023; Armbruster FAZ 29.3.2023.

⁴² Mey, Der Standard 12.7.2025; Holtermann/Knees, Handelsblatt 7.2.2024.

⁴³ Berz/Engel/Hacker ZUM 2023, 586 (588); Kumkar/Rapp ZfDR 2022, 199 (200).

⁴⁴ Available at: <https://informationdemocracy.org/wp-content/uploads/2024/03/ID-AI-as-a-Public-Good-Feb-2024.pdf>.

⁴⁵ See also NewsGuard's study on the infiltration of chatbots (OpenAI's ChatGPT, You.com's Smart Assistant, xAI's Grok, Inflection's Pi, Mistral's Le Chat, Microsoft's Copilot, Meta AI, Anthropic's Claude, Google's Gemini and Perplexity's search engine) by Russian government propaganda, <https://www.axios.com/2024/06/18/ai-chatbots-russian-propaganda>.

⁴⁶ See Milne, University of Washington News 6.8.2025; Kühling ZUM 2023, 566 (567).