

Navigating the EU AI Act:

Insights from Legal Experts



Prof. Dr. Michael Beurskens, LL.M. (Gewerblicher Rechtsschutz),
LL.M. (University of Chicago), Attorney at Law (New York)

Who am I?



Prof. Dr. Michael Beurskens

LL.M. (University of Chicago)

LL.M. (Gewerblicher Rechtsschutz / Düsseldorf)

Attorney at Law (New York)

Gliederung

1 What was the French-/German Influence on the AI-Act?

2 How will Enforcement of the AI-Act differ?

3 What is "AI"?

4 How will we deal with GPAI-Models?

5 How shall we acquire "AI Literacy"?

6 In how far is the Regulation really "risk-based"?

7 What requirements is Generative AI subjected to?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

1

What was the French-/German Influence on the AI-Act?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

Was the AI-Act necessary - and will it work?

History

Enforcement

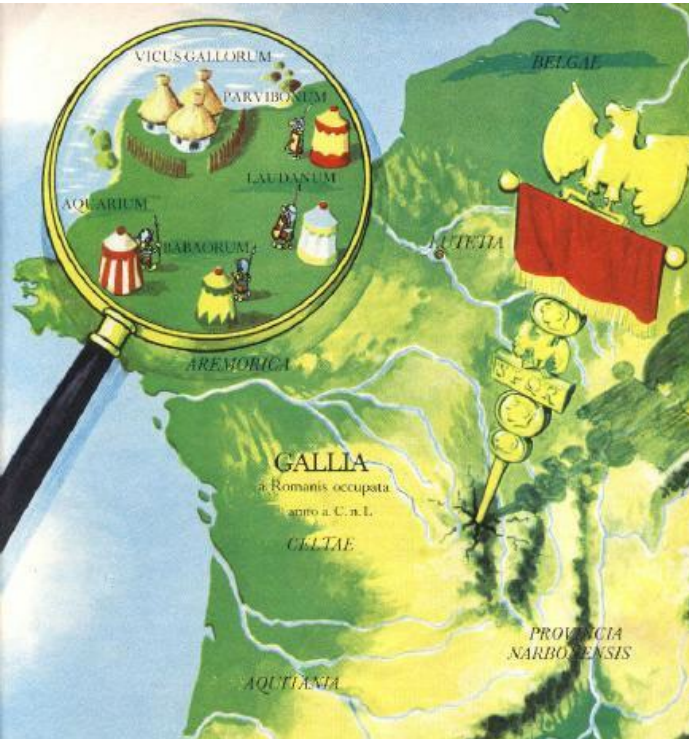
AI

GPAI

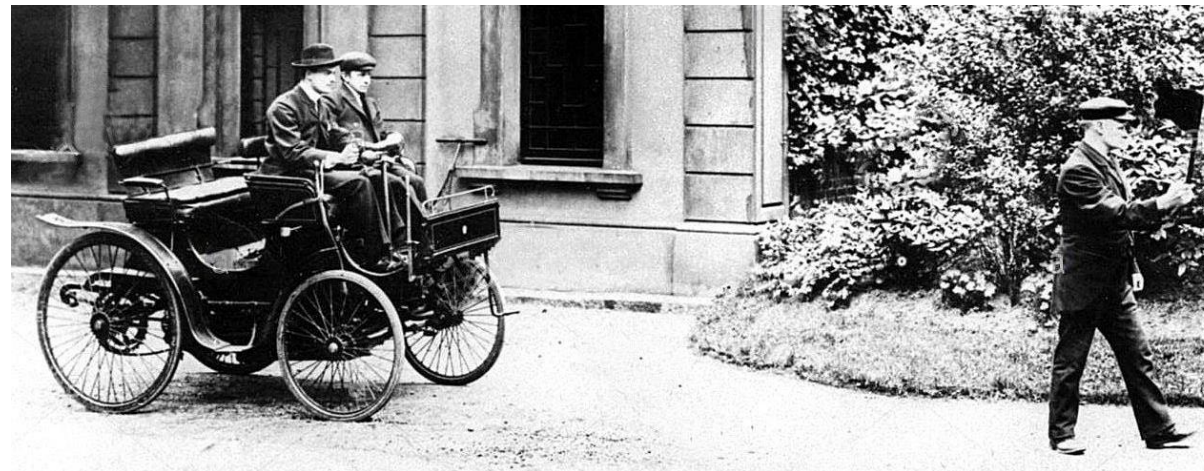
AI Literacy

Risk-based

Generative AI



The EU as a small gallic village?



A "Red Flag Law" to protect incumbents?

"To retain respect for sausages and laws, one must not watch them in the making"

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

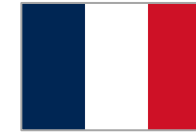


European Parliament
(Strasbourg)



European Council
(Brussels)

In how far is AI-regulation a **French tradition**? (1)



History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

Art. 2 Abs. 2 Loi n°78–17

Aucune décision administrative ou privée impliquant une appréciation sur un comportement humain **ne peut avoir pour seul fondement un traitement automatisé** d'informations donnant une définition du profil ou de la personnalité de l'intéressé.



Art. 15 Directive 95/46/EC -Automated individual decisions

(1) Member States shall grant the right to every person not to be subject to a decision which produces legal effects concerning him or significantly affects him and which is **based solely on automated processing of data** intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc.

In how far is AI-regulation a **French tradition**? (2)



History

Enforcement

AI

GPAI

AI Literacy

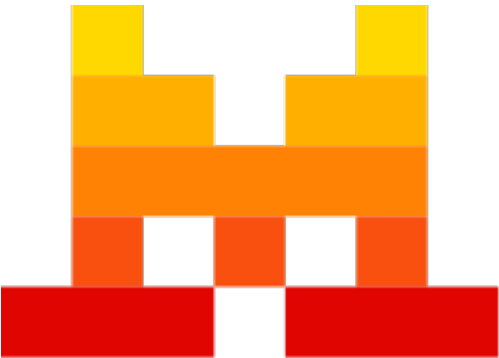
Risk-based

Generative AI

Art. 22 GDPR - Automated individual decision-making, including profiling

- (1) The data subject shall have the right **not to be subject to a decision based solely on automated processing**, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.

Does France love Artificial Intelligence?



Mistral AI SAS



History

Enforcement

AI

GPAI

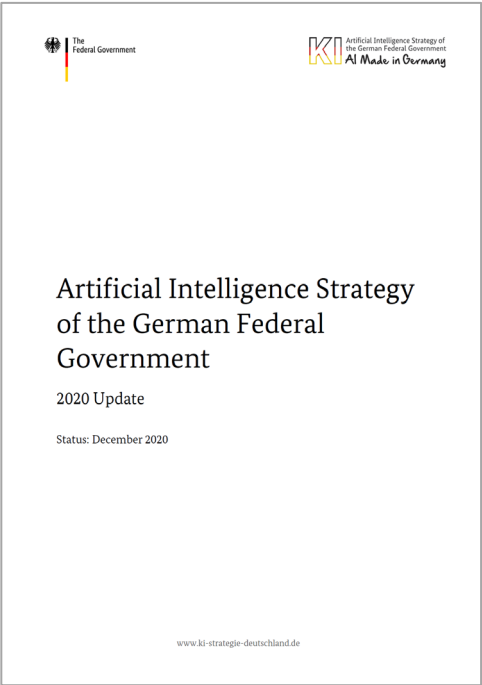
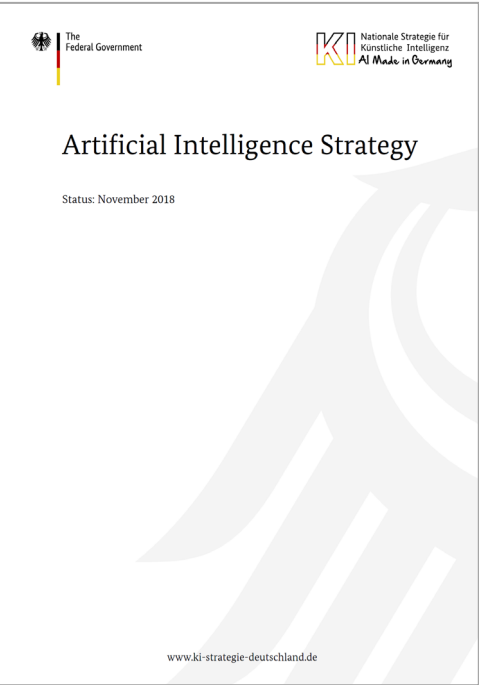
AI Literacy

Risk-based

Generative AI



Does Germany love Artificial Intelligence?



Aleph Alpha GmbH

History

Enforcement

AI

GPAI

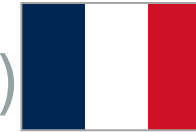
AI Literacy

Risk-based

Generative AI



What was the French influence on the AI Act? (1)



FINANCIAL TIMES

EU's new AI Act risks hampering innovation, warns Emmanuel Macron

French president argues landmark rules may leave European tech companies lagging rivals in US, UK and China



Le Monde

ECONOMY • ARTIFICIAL INTELLIGENCE

France agrees to ratify the EU Artificial Intelligence Act after seven months of resistance

The draft European regulation on artificial intelligence took a decisive step forward on Friday, receiving unanimous endorsement from all 27 European Union member countries.

By Alexandre Piquard

Published on February 3, 2024, at 3:13 am (Paris), updated on February 3, 2024, at 11:53 am · 3 min read · [Lire en français](#)

History

Enforcement

AI

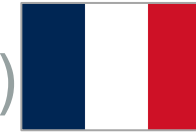
GPAI

AI Literacy

Risk-based

Generative AI

What was the French influence on the AI Act? (2)



Investigate
Europe

Journalism for a changing Europe

FRA saw room for improvement in the avoidance of double regulation by the AI Regulation (as did ITA). The exemption of security and defence from the scope of application must be maintained at all costs. The exemption of the financial sector from the scope of application should also be considered.

EU Affairs

France spearheads member state campaign to dilute European AI regulation

22 January 2025

- **Biometric categorisation** : France considers it very important to preserve the possibility of searching for a person on the basis of objective criteria expressing a religious belief or political opinion, such as the wearing of a badge or accessory, when that person is involved in violent extremism or presents a terrorist risk.

History

Enforcement

AI

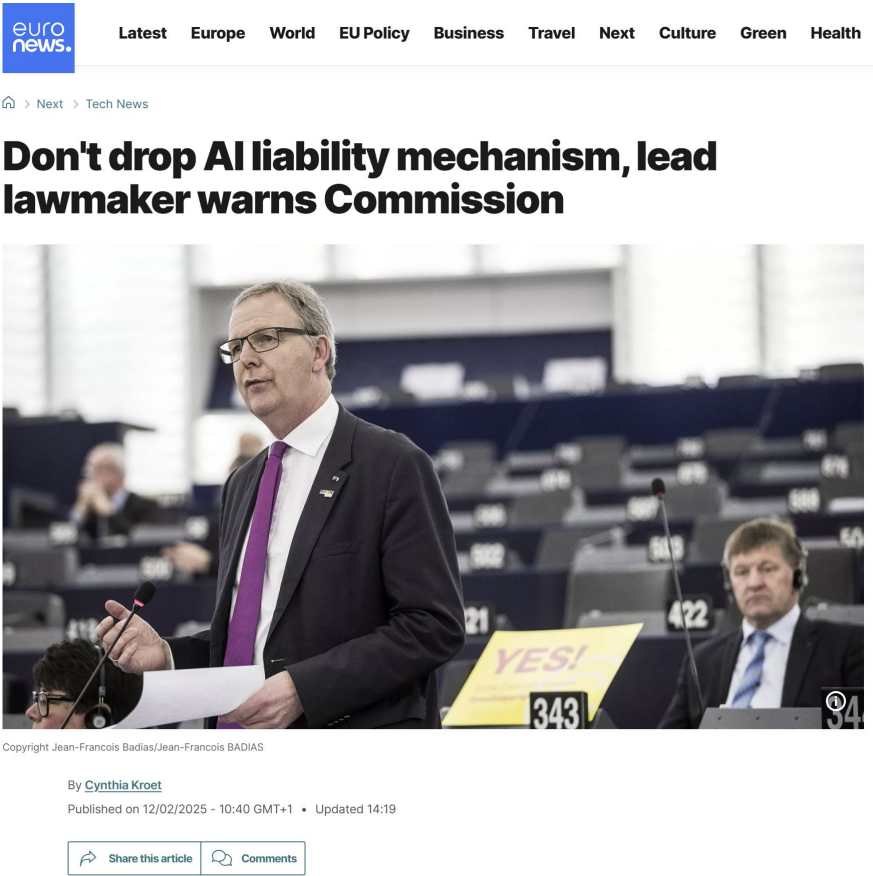
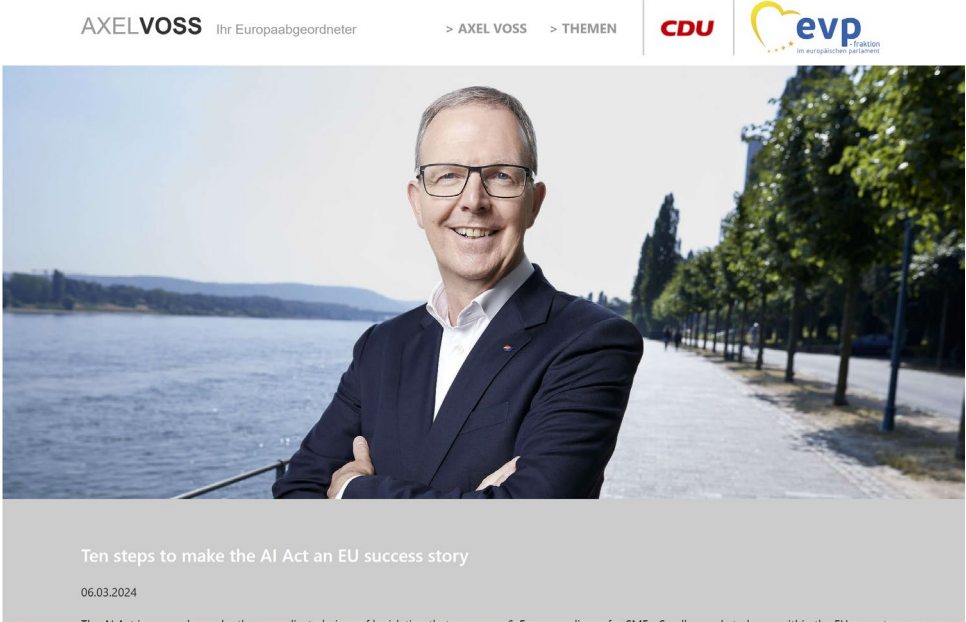
GPAI

AI Literacy

Risk-based

Generative AI

What was Germany's influence on the AI-Act?



History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI



2

How will Enforcement of the AI-Act differ?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

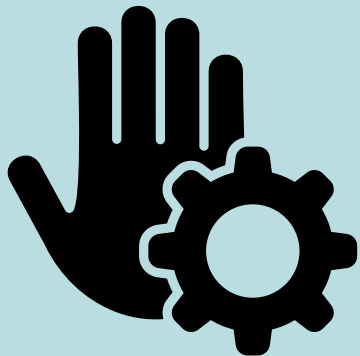
How will we enforce the AI Act?



Private Damages



Public Fines



Injunctive Relief



Prohibition Orders

History

Enforcement

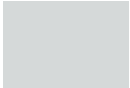
AI

GPAI

AI Literacy

Risk-based

Generative AI



Why aren't Germans (overly) afraid of damages?



History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

Art. 82 GDPR – Right to compensation and liability

- (1) Any person who has suffered material or **non-material damage** as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.

AI-Act = ∅

253 BGB - Intangible damage

- (1) Money may be demanded in compensation for any damage that is **not a pecuniary loss only in the cases stipulated by law.**

In how far does **federalism** affect enforcement?



History

Enforcement

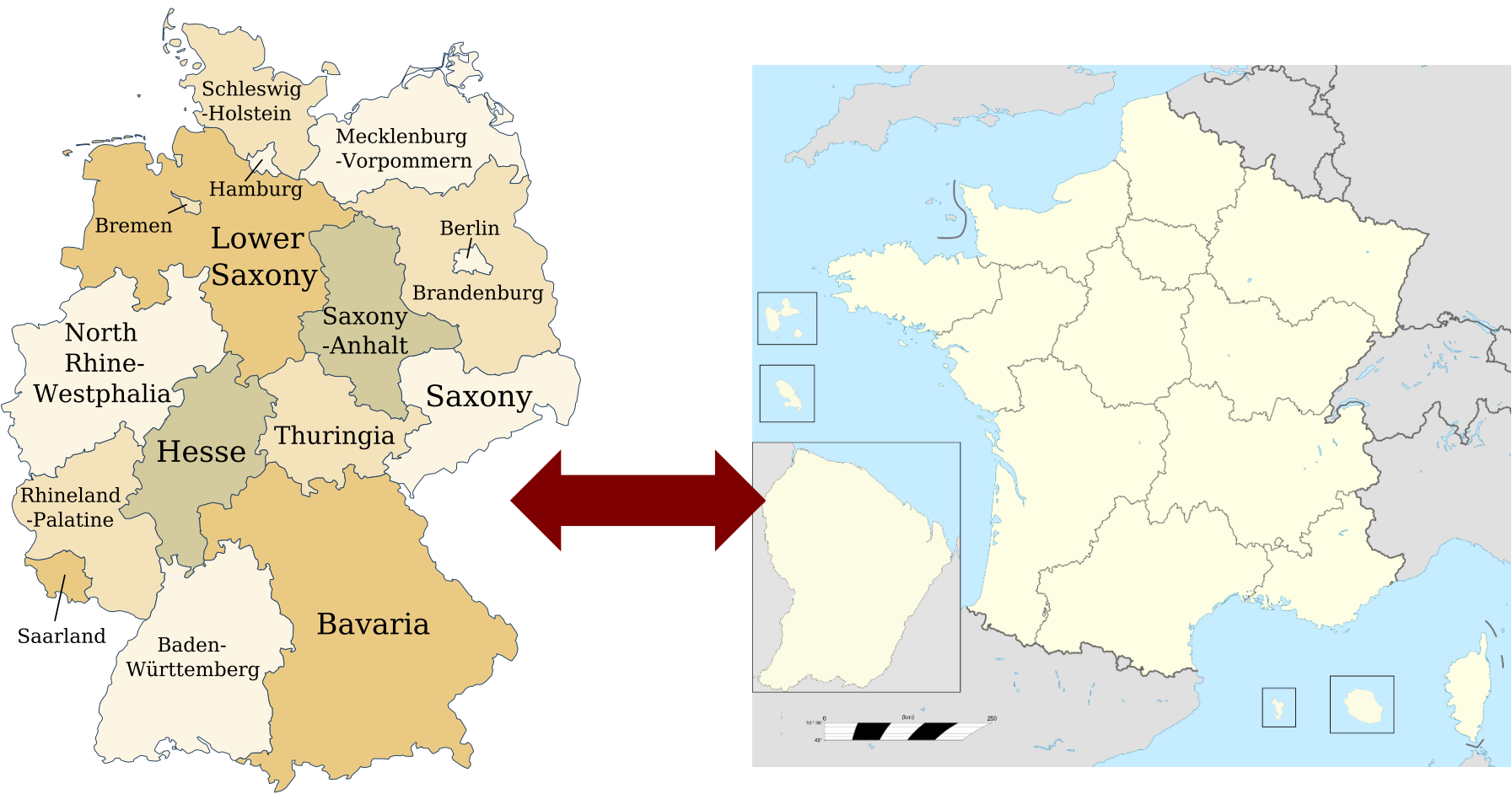
AI

GPAI

AI Literacy

Risk-based

Generative AI



15 States
+ Federal Law

Central Government
(delegation to regions/départements)

Who will enforce the AI-Act?



Commission nationale de l'informatique et des libertés
(Privacy Enforcement Agency)



Agency for infrastructure (energy,
telecommunications, mail, railway)

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

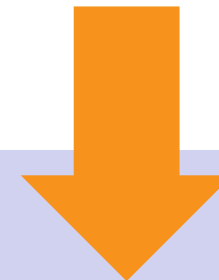
Generative AI

In how far are public fines a risk to public authorities?

Art. 83 GDPR – General conditions for imposing administrative fines

(7) Without prejudice to the corrective powers of supervisory authorities pursuant to Article 58(2), each Member State **may lay down the rules on whether and to what extent administrative fines may be imposed on public authorities** and bodies established in that Member State.

AI-Act = ∅



History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

3

What is "AI"?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

What should we regulate?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

19 / 48

Art. 3 AI-Act – Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘AI system’ means 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;

Guidelines on the definition of an
artificial intelligence system established by AI Act

How should we understand those requirements?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

20 / 48

The reference to ‘some degree of independence of action’ in recital 12 AI Act excludes systems that are **designed to operate solely with full manual human involvement and intervention.**

The use of the term ‘may’ in relation to this element of the definition indicates that a system may, but **does not necessarily have to, possess adaptiveness or self-learning capabilities** after deployment to constitute an AI system.

Some systems have the capacity to infer in a narrow manner but may nevertheless fall outside of the scope of the AI system definition because of their **limited capacity to analyse patterns and adjust autonomously their output.**

What does "inference" mean?

Recital 12 AI-Act 2024/1689

The techniques that enable inference while building an AI system include **machine learning approaches** that learn from data how to achieve certain objectives, and **logic- and knowledge-based approaches** that infer from encoded knowledge or symbolic representation of the task to be solved.

The capacity of an AI system to infer **transcends basic data processing** by enabling learning, reasoning or modelling.

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

What does "**inference**" exclude?

- Systems used to ... approximate traditional, **well established optimisation methods**, such as linear or logistic regression methods, fall outside the scope of the AI system definition.
- [Systems that follow] **predefined, explicit instructions or operations** are developed and deployed to execute tasks **based on manual inputs or rules**, without any 'learning, reasoning or modelling'.
- While effective in many applications, **heuristic methods** *may* lack adaptability and generalization compared to AI systems that learn from experience.
- All machine-based systems whose **performance can be achieved via a basic statistical learning rule**, while technically may be classified as relying on machine learning approaches fall outside the scope of the AI system definition, due to its performance.

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

Who is the "provider" of an AI-System?

Art. 3 AI-Act 2024/1689 – Definitions

For the purposes of this Regulation, the following definitions apply:

- (3) ‘provider’ means a ... body that **develops** an AI system or a general-purpose AI model or that **has** an AI system or a general-purpose AI model **developed** and **places it on the market** or **puts the AI system into service** ..., whether for payment or free of charge;

History

Enforcement

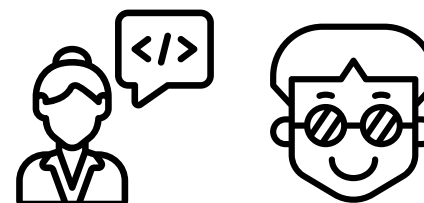
AI

GPAI

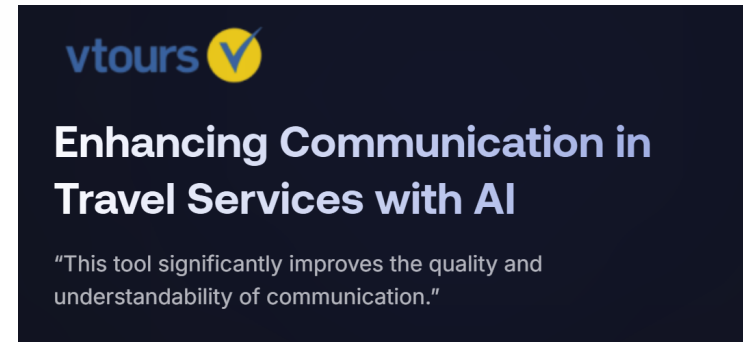
AI Literacy

Risk-based

Generative AI



Who is the "**provider**" of an AI-System?



develops or ... has developed

Art. 3 AI-Act 2024/1689 – Definitions

For the purposes of this Regulation, the following definitions apply:

11. '**putting into service**' means the supply of an AI system for first use directly to the deployer or **for own use** in the Union for its intended purpose;

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

Who is the "provider" of an AI-System?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

Art. 25 AI Act 2024/1689 – Responsibilities along the AI value chain

1. Any ... third-party **shall be considered to be a provider** of a high-risk AI system for the purposes of this Regulation ... in any of the following circumstances:
 - (a) they put their **name or trademark** on a high-risk AI system already placed on the market or put into service ...;
 - (b) they make a **substantial modification** to a high-risk AI system that has already been placed on the market ... ;
 - (c) they **modify the intended purpose** of an AI system, including a general-purpose AI system, which has not been classified as high-risk and has already been placed on the market ...

Who is a "deployer"?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

Art. 3 AI-Act 2024/1689 – Definitions

For the purposes of this Regulation, the following definitions apply:

- (4) '**deployer**' means a ... body **using an AI system** under its authority except where the AI system is used in the course of a personal non-professional activity;



Who is a "deployer"?

Everyone, using AI-tools (even "off-the-shelf" standard tools!)
beyond private/personal purposes



History

Enforcement

AI

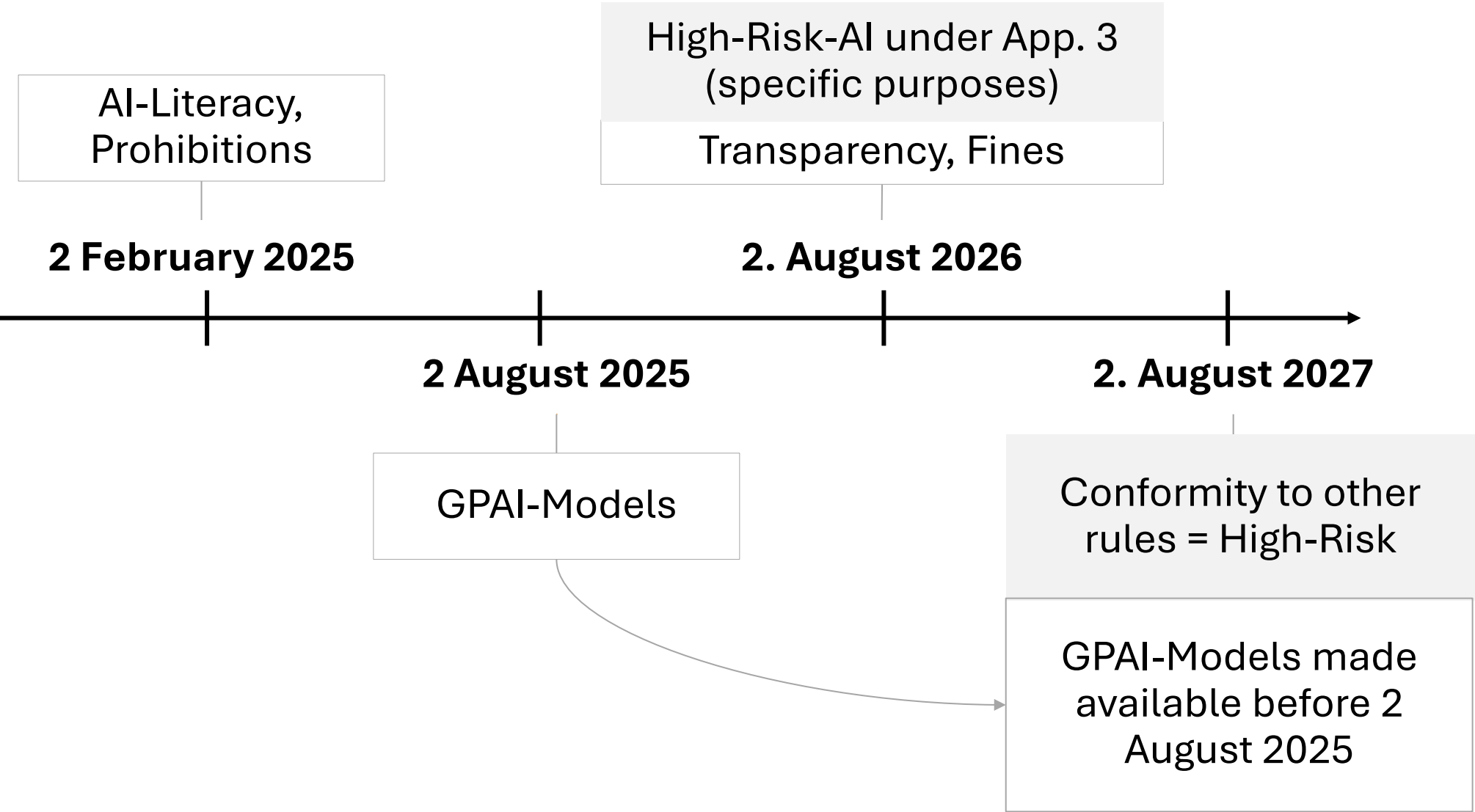
GPAI

AI Literacy

Risk-based

Generative AI

When will/does the AI-Act apply (Art. 113 KI-VO)?



- History
- Enforcement

AI

- GPAI
- AI Literacy
- Risk-based
- Generative AI

What about High-Risk-Systems deployed/employed before 2 August 2026?

Until 31 December 2030	Components of EU-wide Systems (Schengen, Visa, Eurodac, Immigration/Emigration, Travel Information, Criminal Registers)
Until 2 August 2030	High Risk Systems intentionally used by public authorities
(Only) with significant changes in Conception	Other High Risk Systems

- History
- Enforcement
- AI**
- GPAI
- AI Literacy
- Risk-based
- Generative AI

4

How will we deal with GPAI-Models?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

What are “AI models with general purpose”? (1)

Artificial Intelligence	not: “simple data processing”, but “infer”
Model	<ul style="list-style-type: none">not: „System“ bot component, recital 97„An AI model is a program that applies one or more algorithms to data to recognize patterns, make predictions or make decisions without human intervention.” <p>https://www.ibm.com/topics/ai-model</p>
Considerable general usability	<ul style="list-style-type: none">can competently fulfill a wide range of different tasks (or)can be integrated into a variety of downstream systems or applications

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

What are “AI models with general purpose”? (2)

Recital 98 AI-Act 2024/1689

Whereas the generality of a model could, inter alia, also be determined by a number of parameters, models with **at least a billion of parameters** and trained with a large amount of data using self-supervision at scale should be considered to display significant generality and to competently perform a wide range of distinctive tasks.

Llama 3.1 – 405B, 70B, 8B
with multilinguality and
long context

The Llama 4 family of models
comes in two flavors: 109B, and
402B parameters (17B active)

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

What is not required by a GPAI model?

Complexity not relevant	Even “small” models with a general purpose are covered
Training not necessary (“including”)	Including pure algorithmic models
Also: Refinements to existing models	Not only “new developments”
Access via (web) API is sufficient	No transfer of source code or libraries required
Use (only) in a separate system sufficient	No distribution “as a model” required, own use (also “covert”) is sufficient

- History
- Enforcement
- AI
- GPAI**
- AI Literacy
- Risk-based
- Generative AI

What does not constitute a “GPAI model”?

purely **internal procedure**



not material for the provision of goods or services to third parties



does **not impair** the rights of natural persons

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

When does a GPAI model constitute a “systemic risk”?

2024: approx. 10,4 Mio. US\$		2023: approx. 20,8 Mio. US\$
High efficiency capabilities: > 10²⁵ FLOPS for training		

Corresponding skills or effect

- Number of parameters
- Quality or size of the data set
- Quantity of calculations for training the model
- Input and output modalities of the model
- Benchmarks and assessments of the model's capabilities
- Impact on internal market (min. 10,000 registered users)
- Number of registered end users

History

Enforcement

AI

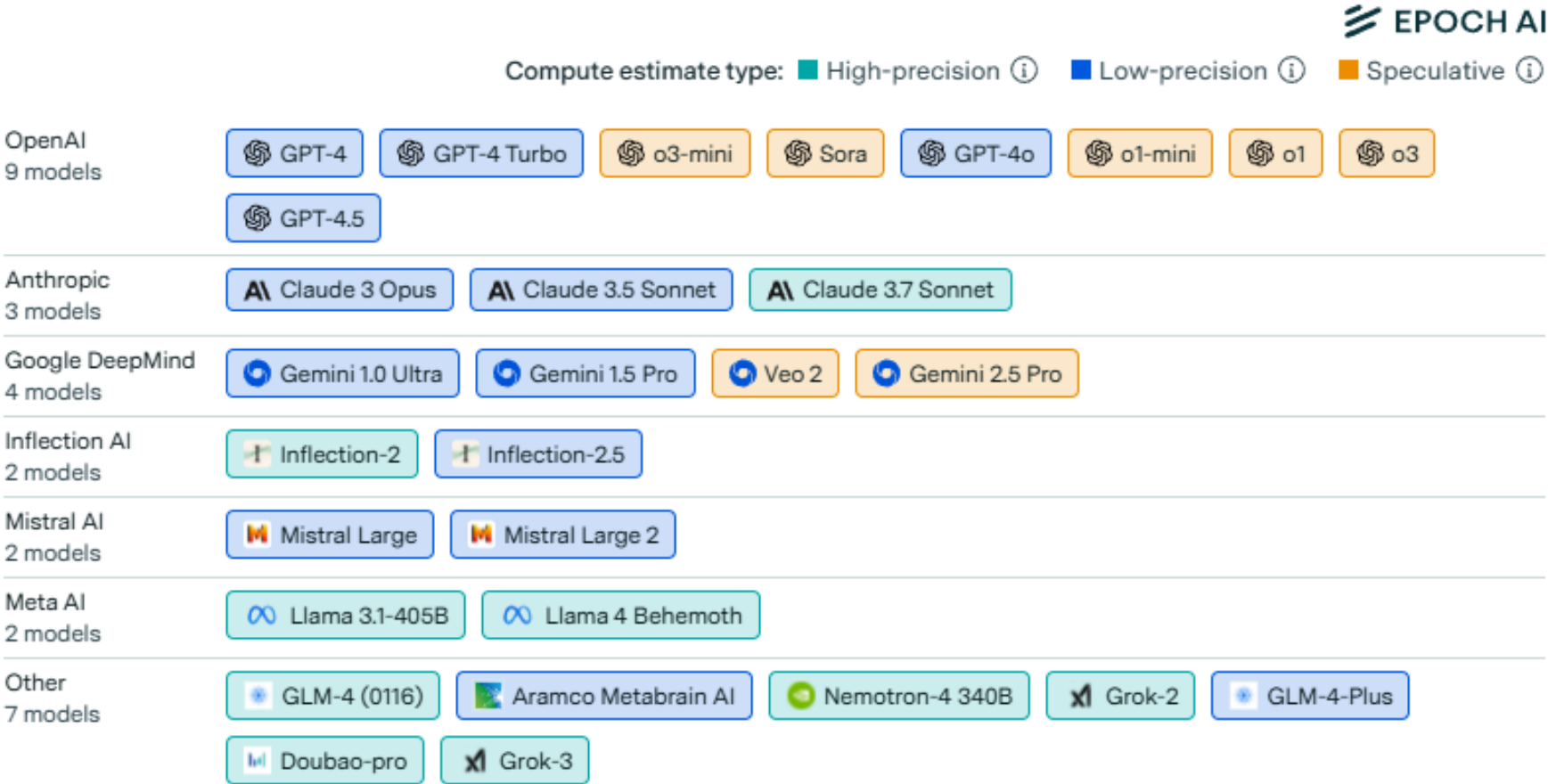
GPAI

AI Literacy

Risk-based

Generative AI

When does a GPAI model constitute a “systemic risk”?



- History
- Enforcement
- AI
- GPAI
- AI Literacy
- Risk-based
- Generative AI

“Despite the high cost, we expect a proliferation of such models—we saw an average of roughly two models over this threshold announced every month during 2024.”

What are the obligations for GPAI models?

All GPAI-Models
<i>Technical documentation*</i>
<i>Information for downstream providers*</i>
Strategy on EU copyright law
Zusammenfassung der Trainingsdaten
Art. 53 AI Act 2024/1689

Models with syst. Risk
Model evaluation
Risk management
Incident-Management
Cybersecurity
Art. 55 AI Act 2024/1689

History
Enforcement
AI
GPAI
AI Literacy
Risk-based
Generative AI

* if necessary also through source code for open source software

5

How shall we acquire "AI Literacy"?

History

Enforcement

AI

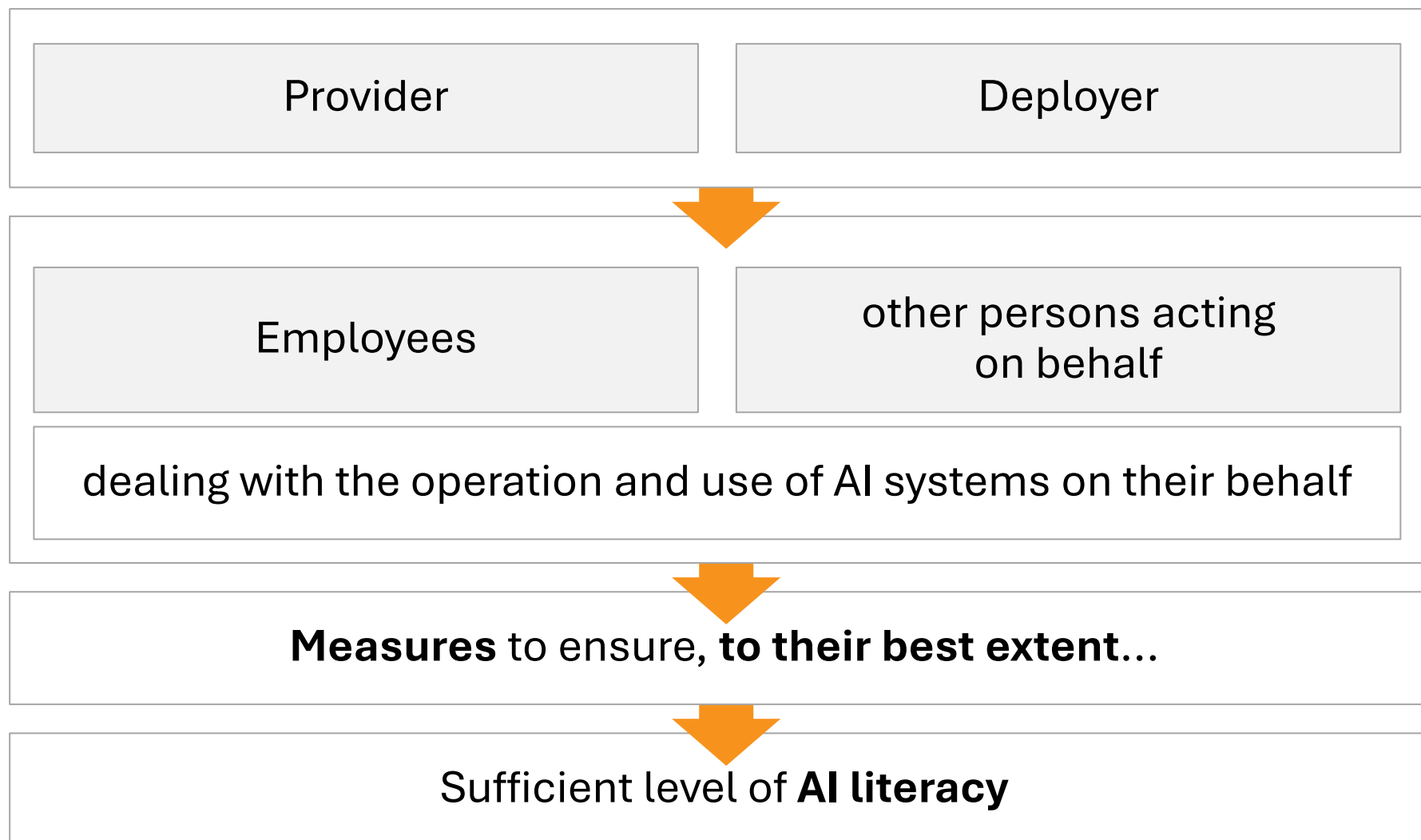
GPAI

AI Literacy

Risk-based

Generative AI

Who must acquire „AI-Literacy“ (Art. 4 AI-Act)?



History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

What is the **subject** of "AI Literacy"?

Erwägungsgrund 20

Enforcement of AI-Act

Concepts, to decide

Correct use in Development phase

Measures to be taken in **use**

Interpretation of output

Effect of output

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

What is a „**sufficient level**“?

technical experience

experience, education, position

context of use

persons / groups
regarding use of AI-Systems



obligatory attendance?

Review? Test? Exam?

Recording? Live?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

6

In how far is the Regulation really "risk-based"?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

What is „illegal AI“?

Subliminal influence, deliberate manipulation/deception

Influencing vulnerable persons

Evaluation based on social behavior or pers. characteristics

Offense prognosis based on profiling/assessment of personal characteristics

Database for facial recognition from Internet/surveillance recordings

Derivation of emotions at the workplace + in educational institutions

Race, political affiliation, religion, sex life/exclusion through biometrics

biom-. real-time remote identification in public spaces for law enforcement

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

What is „High Risk AI“?

Harmonized machine safety

Biometrics

Critical infrastructure

Education and vocational
training

Employment, personnel
management, access to self-
employment

Basic private and public services
and benefits

Administration of justice and
democratic processes

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

Is each of these areas **always** “high-risk”?

Art. 6 AI Regulation 2024/1689 - Classification rules for high-risk AI-systems

3. By way of derogation from paragraph 2, an AI-system listed in Annex III shall not be considered high-risk if it does not pose a significant risk of harm to the health, safety or fundamental rights of natural persons, including by not significantly influencing the outcome of decision-making. ...

4. ¹A provider that considers that an AI-system listed in Annex III is not high-risk shall document its assessment before that system is placed on the market or put into service. ²That provider shall be subject to registration in accordance with Article 49(2).

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

What are the requirements for high-risk AI?

Art. 9 AI Act 2024/1689 Risk Management	Art. 10 AI Act 2024/1689 Data Governance	Art. 11 AI Act 2024/1689 Technical documentation
Art. 12 AI Act 2024/1689 Recording obligations	Art. 13 AI Act 2024/1689 Information for operators	Art. 14 AI Act 2024/1689 Human supervision
	Art. 15 AI Act 2024/1689 Accuracy, robustness, security	

- History
- Enforcement
- AI
- GPAI
- AI Literacy
- Risk-based
- Generative AI

7

What requirements is Generative AI subjected to?

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI

What are the obligations for **generative AI**?

Recognizability of AI when interacting with humans

(Art. 50 para. 1 AI Regulation 2024/1689)

Watermarks for generated content

(Art. 50 para. 2 AI Regulation 2024/1689)

Observe **data protection** for emotion recognition or biometrics

(Art. 50 para. 3 AI Regulation 2024/1689)

Disclosure of the generation / manipulation of **deepfakes**

(Art. 50 para. 4 AI Regulation 2024/1689)

History

Enforcement

AI

GPAI

AI Literacy

Risk-based

Generative AI