Oppenhoff AI Taskforce

We integrate AI systems into your business processes in a legally compliant manner.

AI systems are increasingly becoming an integral part of business processes, offering countless opportunities to increase efficiecy and opening up innovative paths for sustainable growth.

This transformation not only offers opportunities, but also raises many legal questions, for example:

- What obligations arise from the AI Act for manufacturers or users of AI applications?
- Does my AI application comply with data protection requirements?
- What liability risks am I exposed to in the event of damage?
- Do I have to contact the works council before implementation?

Manufacturers and users of AI systems already need to take precautions now to ensure that AI systems can be developed, trained, placed on the market, operated and used in a legally compliant manner. The legal risks should already today be appropriately allocated in contracts for AI systems.

AI projects of all kinds, starting with the simple purchase of standard AI solutions, should therefore be supported by legal experts from an early stage. This is due to the fact that the use of immature technologies can lead to considerable fines, liability risks and damage to the company's reputation.

Your AI projects: legally compliant from the start

Oppenhoff's interdisciplinary AI Taskforce ensures your compliance with the requirements of the EU's AI Act and many other legal requirements for AI from the very outset, as well as the many other legal requirements for AI, and that AI systems can be used in a legally compliant manner.

We advise you on, among other things,

- the execuitionof industry-specific **AI training courses**
- the drafting and implementation of **company AI guidelines**, including the negotiation of shop agreements
- the development of an **AI strategy and contract design for AI projects**, from the purchase of AI solutions to complex agile development projects
- the **data protection-compliant use of AI** in the company, in particular with regard to the processing of employee data

Together, we build a bridge between technology and law – enabling your AI projects to be sustainably successful!

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or scan for further information

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The development and use of AI raises many different legal issues
and is not limited to the EU's AI Act.

Have you thought of everything?

AI Act applicable on a staggered basis from 2024

AI Act

Do you have an overview of the obligations?

The AI Act is anticipated to come into force in the second quarter of 2024. The regulations on prohibited AI will apply six months after the AI Act comes into force, certain regulations for high-risk AI and general purpose AI models after one year and the other regulations after two years. The aim is to make Europe a pioneer for trustworthy, safe and innovative AI. The AI Act imposes numerous obligations on providers and operators of AI, depending on the risk posed by the system. The higher the risk, the stricter the obligations. In the case of high-risk AI systems, all companies that use them are subject to strict monitoring obligations. Certain AI applications are prohibited, e.g. biometric systems, emotion recognition systems and social scoring. Consumers have the right to lodge complaints and receive meaningful explanations.

Data protection

Are your AI applications compliant with the applicable data protection laws?

By their very nature, AI projects raise numerous data protection issues, as the development and use of AI requires the availability of large amounts of data and the processing of personal data can be relevant at all stages of AI development. In addition, the term of personal data is subject to broad interpretation.

The overriding interest of the providers and operators of the AI systems often justifies the respective data processing, provided this is done for research and statistical purposes. Any data transfers to third countries must be justified separately.

In addition, providers and operators of AI must fulfil the transparency and information obligations under data protection law and observe the principle of data minimisation.

AI Liability Directive expected to apply from 2026

Software

Are you the owner of all rights?

AI systems consist of software and databases and utilise data. Open source software is often used. Against this background, companies that develop AI systems must ensure that they own all rights to the object of development. This is the only way they can amortise their investments and prohibit the unlawful use of their systems by third parties.

Finally, the question arises who owns the rights to software codes generated by AI.

Civil liability

Are you aware of the special liability provisions for AI?

If damage occurs when using AI systems, various liability issues arise. In September 2023, the European Commission adopted a proposal for an AI Liability Directive. This aims to harmonise civil liability regulations. The Directive contains simplified rules of representation and proof in the enforcement of claims in favour of the injured party.

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Cybersecurity

Do your measures comply with EU requirements?

EU cybersecurity regulations such as the NIS 2 Directive define the legal framework throughout the EU to achieve a uniformly high level of cybersecurity. In addition, different German national regulations apply. Among other things, companies must implement reporting obligations for security incidents, risk management measures to combat cyber-attacks and cybersecurity training for company management.

New obligations are to be transposed into national law by October 2024 via the NIS 2 Implementation Act. AI technology can support these compliance processes - provided it is used in accordance with the law.

Data Act

Are you aware of the claim to get access to data?

The data access and data sharing requirements set out in the Data Act are intended to increase the availability of data and break up the multitude of data silos. Among other things, data generated by networked products and connected services shall be accessible by default.

This also applies to data generated by AI that is implemented in devices. Large parts of the regulation will apply from 12 September 2025, and companies must be prepared for this and adapt their products accordingly.

Intellectual property

Are your AI creations sufficiently protected?

The use of AI can lead to new challenges in the area of intellectual property, especially where the creation of works, patents, designs or marks by AI systems are concerned. Companies should protect their rights and make clear agreements on intellectual property in relation to AI developments.

This can also prevent disputes with employee inventtors. At the same time, companies should clearly define which data is used for training and operating their systems.

World of work

Are your employees and the works council on board?

The implementation of AI technologies is causing significant changes in the world of work. Recruiting and HR management are being accompanied by AI and work processes are being reorganised by AI. The demands on employees are increasing. The use of AI technology in the company requires the consent of the works council.

A timely dialogue with employees and negotiations with the works council should be initiated at an early stage in order to achieve a high level of acceptance of AI in everyday working life.

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Cartels

Does your AI operate within the framework of competition law regulations?

Cartel authorities around the world are keeping a watchful eye on AI to ensure that its use does not lead to restrictions of competition.

AI developers and operators are obliged to continuously check the functions of the programmes for effects that violate antitrust law. AI tools shall not be misused for price or market agreements between competitors. Increased market transparency created by AI applications or the "signalling" of future market behaviour can also be problematic under competition law.

Public law / regulatory

Do processes to minimise liability risks under public law exist?

AI applications can be used to fulfil obligations under public law, such as reporting and supervisory duties. However, when using AI tools for support, it should be noted that the fulfilment of duties is primarily the responsibility of the management. It also bears the responsibility for errors made by the AI.

Developers, users and operators of AI must also be careful when it comes to foreign trade law: both software and hardware components as well as technical data, which serve as the basis for AI can be relevant under export control law and therefore restricted in their handling. Furthermore, the sale of a German operator or developer of AI can be subject to investment screening.

Insurances

Do you use AI in compliance with regulations?

There are various innovative AI-based business models in the insurance industry. Examples include chatbots in sales and customer service, fraud prevention applications and automated underwriting, claims settlement and audit processes.

Regulatory compliance must also be taken into account in order to fulfil existing regulatory requirements. Insurers and brokers must ensure careful AI governance. Insurance companies must also adhere to the limits of permissible insurance-related activities when integrating and financing AI systems.

Company acquisitions & VC investments

Have you considered all "purchased" consequential risks?

Companies are increasingly trying to push forward their own AI transformation through external growth. Technology start-ups and SMEs are therefore the centre of the resurgent transaction environment. However, as the regulation of AI will also apply in part to mere users of AI, the "purchased" consequential risks will have to be analysed in practically every M&A deal in future.

From a start-up and investor perspective, funding programmes such as the announced EU package of measures to support European start-ups and SMEs should also be considered when developing trustworthy AI.

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Team

IT Law and Data Protection

Dr. Marc Hilber
Partner • Attorney
marc.hilber@oppenhoff.eu

Dr. Jürgen Hartung
Partner • Attorney
juergen.hartung@oppenhoff.eu

Valentino Halim
Junior Partner • Attorney
valentino.halim@oppenhoff.eu

Dr. Axel Grätz
Associate • Attorney
axel.graetz@oppenhoff.eu

Employment Law

Kathrin Vossen
Partner • Attorney
kathrin.vossen@oppenhoff.eu

Intellectual Property Law

Georg Lecheler
Partner • Attorney
georg.lecheler@oppenhoff.eu

Antitrust Law

Dr. Daniel Dohrn
Partner • Attorney
daniel.dohrn@oppenhoff.eu

Public Law

Mareike Heesing
Junior Partner • Attorney
mareike.heesing@oppenhoff.eu

Tax Law

Marc Krischer
Partner • Certified Tax Adviser •
Certified Public Accountant (in own
practice)
marc.krischer@oppenhoff.eu

Corporate Insurance & M&A

Anna-Catharina von Girsewald
Partner • Attorney
anna.vongirsewald@oppenhoff.eu

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