

IS THE AI ACT ANY CLEARER WITH RESPECT TO GPAI MODELS?

Insights on the GPAI Guidelines

On 18 July, the European Commission published its guidelines to clarify the AI Act's requirements for providers of general-purpose AI (GPAI) models (**GPAI Guidelines**). These came just over one week after the publication, at long last, of the Code of Practice for GPAI models (**GPAI Code of Practice**). And on 24 July, the European Commission also published the template for the public summary to be drawn up regarding the content used for GPAI model training (**GPAI Training Summary Template**).

Whilst non-binding, the GPAI Guidelines are helpful in framing the impact of the AI Act for model providers and they provide useful clarifications. However, gaps and important questions remain. In this document, we share thoughts on a selection of items regarding the GPAI Guidelines, including areas where executive decisions and action may be needed pending potential future developments. We also include a few pointers on the GPAI Code of Practice and a brief overview of the GPAI Training Summary Template.

01 GPAI model or not?

If the model's training compute is $> 10^{23}$ FLOP and it can generate language, text-to-image or text-to-video it is likely a GPAI model.

This is the indicative criterion the European Commission will be using, at least for now (with an increased threshold compared to what was initially envisaged, i.e. 10^{22} FLOP). This approach should help businesses implement a somewhat systemized process with pre-filtering of AI models. There should still be a case-by-case assessment, however, in the light of the key functional characteristics of GPAI models under the AI Act. One of those being that the model is capable of competently performing a wide range of distinct tasks. This is illustrated by examples in the GPAI Guidelines. →

Also, organisations will need to monitor future developments. The European Commission's approach may change based on tech and market evolutions, and other criteria may be relied on.

Example:

Criterion met [(FLOP threshold + generation of language)] but model trained specifically to either transcribe speech to text (Ex. 1) or to generate speech from text (Ex. 2) → in practice, not "capable of competently performing a wide range of distinct tasks" = > not a GPAI model.

02 Benefit of the GPAI legacy clause in case of developments from 2 August 2025?

The rules for providers of GPAI models kick in on 2 August 2025 for models placed on the market from that date. Models placed on the market before then (legacy models) have until 2 August 2027 to comply (GPAI legacy clause).

One question that is not clearly addressed in the AI Act is whether modifications made to a legacy model from 2 August 2025 could call into question the benefit of the GPAI legacy clause. This ties into another question that was to be clarified in the GPAI Guidelines, i.e. what constitutes a new model.

The GPAI guidelines provide some answers, yet they remain partial and do not clearly resolve all issues. Additional analysis and positioning are required in the absence of further clarifications. Here are some key elements that should be part of the thinking as businesses assess this issue:

→ **Modifications by an actor other than the original model provider¹:**

According to the GPAI Guidelines, a downstream modifier of a GPAI model becomes the “provider” as regards the modified GPAI model where there is a significant change in the model’s generality, capabilities, or systemic risks. The GPAI Guidelines provide further detail on what the downstream modifier is then responsible for, following a form of distributive approach building on the AI Act’s provisions.

The baseline, indicative criterion that will be used to assess whether there is a significant change: where the training compute used for the modification is $> 1/3$ of that of the original model. There are alternative thresholds, too. And the European Commission’s approach may change down the line, based on tech and market evolutions.

Even though the GPAI Guidelines appear to guard against expressly qualifying this as a new model, it seems that the rules for GPAI models should therefore apply to a third party that takes a legacy model and significantly changes it from 2 August 2025 (once again, with respect to the modified model).

This may not be straightforward, however, and there will be questions regarding the application of this principle in practice.

→ **Modifications by the model’s original provider:**

The central concept here appears to be the model’s large pre-training run. “Developments” following that large pre-training run should be deemed part of the same model’s lifecycle, and to not give rise to a new model.

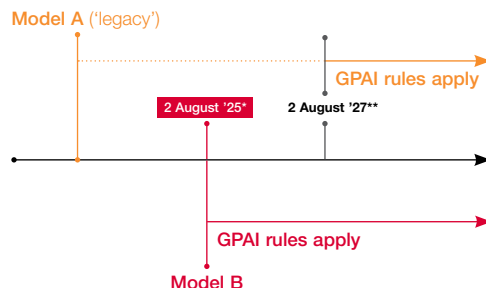
This would lend weight to an argument that, even if the original provider modifies a legacy model from 2 August 2025, it continues to benefit from the GPAI legacy clause as this is part of the initial model’s lifecycle.

One exception would be if the original provider carries out a new large pre-training run: this would be considered to give rise to a new model, triggering the application of the new rules.

Also noting that, in previous working documents, the $1/3$ training compute threshold that applies to downstream modifiers was to apply to changes by the original provider too: above that threshold, the modifications led to a distinct model. This no longer appears to be the case regarding the original provider.

→ **Need for a holistic assessment:**

Deciding on how to approach these issues should follow a holistic analysis, weighing up all relevant documentation and available guidance to the extent the situation is not clear-cut and different positions need to be reconciled.



*GPAI rules kick in for models placed on Union market from that date

**GPAI rules kick in for models placed on Union market before 2 August '25

**Mod Training Compute $>$
 $1/3$ of Original Training Compute**

How is the notion of large pre-training run to be understood?

“A large pre-training run is understood as the foundational training run conducted on a large amount of data to build the model’s general capabilities, which may take place after smaller experimental training runs, and which may be followed by fine-tuning for specialisation or other post-training enhancements.”

03 Placing on the market?

The GPAI Guidelines provide some useful clarifications on the notion of placing on the market but are not in themselves sufficient.

→ **Examples given but case-by-case assessment required:**

As anticipated, there are numerous examples of what constitutes placing on the market, building on the AI Act’s recitals and ‘giving insights’ into when a model should be considered placed on the market.

For instance, the model is: made available for the first time on the Union market via a software library or package, an API or a cloud computing service or by

¹ Or someone acting on behalf of the original model provider.

being copied onto a customer's own infrastructure; uploaded for the first time to a public catalogue, hub or repository for direct download on the Union market; integrated into a mobile app made available for the first time on the Union market via app stores.

However, the examples need to be interpreted in the light of the European Commission's Blue Guide and the AI Act. And they are to be assessed on a case-by-case basis, whereas important questions remain unanswered.

→ **Model integration, placing on the market and responsibility:**

The GPAI Guidelines look at different scenarios linked to the integration of AI models into AI systems, and the consequences. Whilst some basically confirm what the AI Act already provides, others are more interesting.

This is in particular the case where an upstream actor makes a GPAI model it has developed available for the first time to a downstream actor outside the Union market, and that downstream actor integrates the model into a system placed on the Union market. According to the GPAI Guidelines, the upstream actor will in principle still be considered the model provider for the purposes of the AI Act unless it has clearly and unequivocally excluded the distribution and use of the model in the Union, including its integration into AI systems. In that case, the downstream actor should in principle be considered the model provider.

And for the European Commission, the model will be deemed placed on the market when the system it is integrated into is placed on the Union market or put into service in the Union. This could also have important implications.

This scenario reinforces the need for careful assessment of each situation, even if not directly linked to the Union market at the outset, and clear and explicit management in relevant documentation.

04 Open-source exemptions detailed?

As anticipated, the GPAI Guidelines develop the conditions to benefit from the partial open-source exemptions, including around: the nature of the licence; the key notions (access, usage, modification, distribution); public availability of parameters; and the lack of monetisation, with monetisation going beyond just the provision of the model against a price and encompassing other types of monetisation strategies as illustrated by the GPAI Guidelines.

The GPAI Guidelines clarify types of restrictions that may be present in the applicable licence and still qualify as 'open-source' for the purposes of the exemption, whilst flagging examples of specific terms where the presence or absence of that term would disqualify the licence. For example, if the licence does not permit free access, use, modification, and redistribution, it will not qualify as an open-source licence for the purposes of the AI Act. Likewise, a requirement for additional licensing if monthly active users exceed a given threshold or to obtain separate commercial licences for specific use cases expressly disqualifies a licence from the exemption.

05 What's the latest on enforcement?

The GPAI Guidelines, together with recent Q&As, shed some light on what is to be expected. That said, ambiguity remains. Here are a couple of pointers:

- The GPAI Guidelines 'confirm' that fines for breach of the rules for GPAI models only apply from 2 August 2026. And in the first year from 2 August 2025, the European Commission cannot take enforcement actions because its powers only kick in from next year. But the rules still apply from 2 August 2025 (subject to the GPAI legacy clause).
- As per other communications, some form of leniency is announced, in that first year, for those who adhere to the GPAI Code of Practice. The AI Office will collaborate with providers, in particular those who adhere, during that period to help them comply.

- Providers of GPAI models that do not adhere to a Code of Practice may be subject to a larger number of requests for information and for access to conduct model evaluations, throughout the model lifecycle.

Also, amongst the things organisations may want or need to consider as a priority:

- Liaising with the AI Office regarding compliance. The AI Office invites providers placing GPAI models on the market following 2 August 2025 to immediately and proactively contact the AI Office to ensure they are taking the right steps to ensure compliance.
- Notifying the European Commission with respect to any GPAI model with systemic risk to be placed on the market following 2 August 2025, in accordance with the requirement under the AI Act. The GPAI Guidelines indicate that providers who, on 2 August 2025, have trained, are in the process of training, or are planning to train a GPAI model with systemic risk for placing on the market after 2 August 2025 are expected to notify the European Commission without delay and in any event within 2 weeks after 2 August 2025.

5 QUICK TIPS & RECOMMENDATIONS

1. Implement processes to assist with systemizing model classification.
2. Develop policies for model lifecycle management.
3. Be clear on where and how models and systems can or cannot be used.
4. Continuously monitor and manage tech, market and regulatory developments.
5. Engage and cooperate with regulators and key stakeholders, to help constantly shape and reshape the most appropriate regulatory framework.

5 INSIGHTS ON THE GPAI CODE OF PRACTICE

1. The GPAI Code of Practice is a guiding document, provided for in the AI Act, to help organisations demonstrate compliance with the requirements for GPAI models.
2. The GPAI Code of Practice is a key document, at least for now. There is currently no equivalent to support GPAI model providers in their compliance efforts. And the European Commission is incentivizing businesses to adhere, through its approach to compliance and enforcement towards signatories.
3. The GPAI Code of Practice is not the only way organisations can demonstrate compliance, however. And it also doesn't have the same force as other documents organisations should be able to rely on in the future, i.e. harmonised standards.
4. The GPAI Code of Practice is based on assumptions. For instance, the Safety & Security Chapter, which concerns GPAI models with systemic risk, is drafted on the assumption that only around 5 to 15 providers will be subject to the systemic risk obligations. As this will change with time, so should the European Commission's approach and its rulebook.
5. On 1 August, the European Commission and the AI Board released their assessments confirming the 'adequacy' of the GPAI Code of Practice pursuant to the AI Act (see [here](#)). Their assessments contain further insights and recommendations, including in terms of monitoring, updating and guidance that may be issued e.g. to rapidly address breakthrough capabilities, new risk mitigation methods or a fundamental alteration of risk profiles. There is no real talk today of the Implementing Act that the European Commission in principle needs to adopt for the GPAI Code of Practice to be 'approved'.

GPAI TRAINING SUMMARY TEMPLATE: SNAPSHOT

The GPAI Training Summary Template was published on 24 July, accompanied by an explanatory notice as well as a Q&A.

What is it?

A template to prepare the summary of the content used to train the GPAI model. That summary is a requirement for GPAI model providers under the AI Act.

Why is it important?

Because the AI Act requires the summary to be prepared according to that template. This is mandatory, not a voluntary tool.

What is the main aim of the summary?

To increase transparency on the data used in the pre-training and training of GPAI models, and facilitate the exercise and enforcement of their rights by interested parties (e.g. © holders). It needs to be sufficiently detailed and generally comprehensive but not “technically detailed”.

According to the accompanying documentation, that transparency is needed for IP rightsholders but also e.g. to facilitate data subjects’ rights, assist downstream providers integrating GPAI models, safeguard consumer rights, contribute to scientific research and the evaluation of risks and help avoid potential lock-in effects.

What is the scope of the summary?

It covers data used in training – all stages of training, from pre-training to post-training including model alignment and fine-tuning according to the explanatory notice; but only training.

What is the purpose of the GPAI Training Summary Template?

To provide a common minimal baseline for the summary, structured around 3 sections: general information, list of data sources and specific data processing aspects.

As regards data sources, the information is split across publicly available datasets, private non-publicly available datasets obtained from third parties, data crawled / scraped from online sources, user data, synthetic data and other sources not otherwise captured.

What are some other noteworthy aspects?

- **Data crawled and scraped from online sources:** summary to list most relevant Internet domain names crawled (top and second-level domain), by listing the top 10% of all domain names determined by the size of content scraped, in a representative manner.
- **Information on data collected from user interactions** (with the model or with other products / services of the provider): this excludes customer data used to fine-tune a model for specific purposes.
- **Specific data processing aspects – TDM & content moderation:** model providers to include information on the measures implemented to (i) respect reservation of rights from the text and data mining exception, and (ii) avoid / remove illegal content from the training data.
- **Disclosure:** according to the explanatory notice, summary to be made publicly available at the latest when the model is placed on the Union market. To be published on the provider’s official website, in a clearly visible and accessible manner. To also be made publicly available together with the model across all of the provider’s public distribution channels (e.g. online platforms).
- **Summary updates:** where the provider further trains its own model on additional data and that requires an update of the summary content. Frequency: every 6 months or sooner if a significant update of the summary is required.
- **Downstream modifiers’ responsibilities:** according to the explanatory notice, linked to the training used for the model modification only.
- **Legacy models:** providers in principle have until 2 August 2027 to comply. Appears to be some leeway where the information is not available or retrieval would create a disproportionate burden (to be stated and justified in the summary).

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